TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 412

BEDFORD CUT STONE COMPANY, THE CENTRAL OOLITIC STONE COMPANY, THE CHICAGO AND BLOOMINGTON STONE COMPANY, ET AL., PETITIONERS,

vs.

JOURNEYMEN STONE CUTTERS' ASSOCIATION OF NORTH AMERICA, MICHAEL W. MITCHELL, INDIVIDUALLY, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 29, 1926

CERTIORARI GRANTED OCTOBER 18, 1926

(31,978)

(31,978)

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Pleas of the District Court of the United States for the District of Indiana, Begun and holden at the United States Court House in the city of Indianapolis, in said District, on the first Tuesday in May, in the year of our Lord, one thousand nine hundred and twenty four before the Honorable Albert B. Anderson, Judge of said District Court. Placita

* * * * * *

Be it remembered that heretofore, to wit: at the May Term of said Court, on the 2nd day of October, 1924, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to wit:

Come now the complainants by their solicitors Walter Gordon Merritt, and Charles Martindale, and file bill of complaint in the above entitled cause, which bill of complaint is in the words and figures following:

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3 IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana.

Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company, The Hoosier Cut Stone Company,

Complainants,

against

Journeymen Stone Cutters Association of North America, Michael W. Mitchell, individually and as President of the Journeymen Stone Cutters Association of North America; Joseph Blasey, individually and as Secretary and Treasurer of Journeymen Stone Cutters Association of North America; George Taylor, Arthur MacPherson, William J. Hagan, James A. Gowen, Alex MacDougall, Joseph Wall, James Taylor, Alex Taylor, James L. Smith, Each and respectively, individually and as constituting the General Executive Board of Journeymen Stone Cutters Association of North America; Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; George Givens, individually and as President of Bedford Indiana Local, Journeymen Stone Cutters Association of North America; Patrick J. Murphy, individually and as Corresponding Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Lloyd Hoopingarner, individually and as Financial Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Oscar Peters, individually and as Corresponding

Secretary of Bedford, Indiana Machinemen's Local,
4 Journeymen Stone Cutters Association of North America; William Bahr, individually and as Financial Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Henry Beard, individually and as President of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; W. P. Stein, individually and as Secretary of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Thomas Rush, individually and as Secretary of Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America; Charles H. Goodall, individually and as Secretary of Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America; Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America; Dean Acuff, individually and as Secretary of Stinesville Indiana Local, Journeymen Stone Cutters Association of North America,

Defendants.

To the Honorable Judges of the District Court of the United States for the District of Indiana:

Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, and Henry Struble Cut Stone Company, The Hoosier Cut Stone Company each and every one of them being a corporation organized and existing under and by virtue of the laws of the State of Indiana, and having its principal place of business within the District, and each and every one of them being

citizens and residents of the State of Indiana; J. P. Falt
5 Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and a citizen of the State of Massachusetts, and having a principal place of business within the District, Bring This their Bill of Complaint against Journeymen Stone Cutters Association of North America; Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America; Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America, each of them citizens and residents of the State of Indiana and the District of Indiana, and thereupon the complainants complain and say:

1. Bedford Cut Stone Company is an Indiana corporation and citizen and resident of the State of Indiana, and said Company is engaged in business at Bedford, Indiana as a cut stone contractor.

The Central Oolitic Stone Company is an Indiana corporation, engaged in business at Bloomington, Indiana, as a cut stone contractor.

The Chicago & Bloomington Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana, as a stone quarrier and cut stone contractor.

The Consolidated Stone Company is an Indiana corporation engaged in business at Bedford and Bloomington, Indiana, as a stone quarrier and cut stone contractor.

Crescent Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana, as a stone quarrier.

C. D. Donato Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as a cut stone contractor.

Empire Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana, as a stone quarrier.

J. P. Falt Company is a Massachusetts corporation engaged in business at Bedford, Indiana, as a cut stone contractor.

The Furst-Kerber Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as a quarrier and cut stone contractor.

J. Hoadley & Sons Company is an Indiana corporation
6 engaged in business at Bloomington and Stinesville, Indiana, as a quarrier and cut stone contractor.

The Imperial Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as a quarrier and cut stone contractor.

Indiana Quarries Company is an Indiana corporation engaged in business at Bedford, Indiana, as a quarrier.

Inter-State Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as cut stone contractor.

W. McMillan & Son is an Indiana corporation engaged in business at Bedford and Bloomington, Indiana, as a quarrier and cut stone contractor.

Matthews Bros. Company is an Indiana corporation engaged in business at Ellettsville, Indiana, as a cut stone contractor.

Mathers Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana, as a quarrier.

Monroe County Oolitic Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana as a quarrier.

National Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana, as a quarrier.

Perry Stone Company is an Indiana corporation engaged in business at Ellettsville, Indiana, as a quarrier and cut stone contractor.

Reed-Powers Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as cut stone contractor, and engaged in business in Monroe County, Indiana as a quarrier.

John A. Rowe Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as cut stone contractor.

Star Stone Company is an Indiana corporation engaged in business at Bloomington, Indiana, as a quarrier.

The Hoosier Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as a cut stone contractor.

Henry Struble Cut Stone Company is an Indiana corporation engaged in business at Bedford, Indiana, as a cut stone contractor.

2. Each and every one of the complainants, quarry or fab-

ricate, or both quarry and fabricate, Indiana Limestone,
7 in the so-called Bedford-Bloomington District in the State of Indiana. In said business each and every one of the complainants employs upwards of forty employes, has invested upwards of $60,000. and makes annual sales of upwards of $100,000. Over 75% of the said sales of each and every one of said complainants consists of sales in interstate commerce to customers outside of the State of Indiana. The aggregate combined investment of all of the complainants is about $6,000,000. and the annual aggregate sales of all of the complainants from their places of business in the Bedford-Bloomington District in the State of Indiana is about $15,000,000.

3. The complainants and Shea & Donnelly Company, an Indiana corporation, engaged in business at Bedford, Indiana and Charlestown, Massachusetts as a cut stone contractor and quarrier, constitute all of the quarries and cut stone contractors in the Bedford-Bloomington District, producing or fabricating Indiana Limestone, and not working under agreements with the defendant unions, save and except Hoosier Cut Stone Company and Hoadley Stone Company, and the only reason why Shea & Donnelly Company is not included as a complainant herein is because it heretofore brought suits in the District Court of the United States for the Eastern District of Missouri and in the District Court of the United States for the District of Indiana, in both of which it secured injunctions, now outstanding, against interference with its business on account of acts of the same character as herein described, and because, as appears in Subdivision G of paragraph 18 of the complaint, said Shea & Donnelly Company is now being expressly excepted from the present acts of interference by reason of said injunctions.

4. Defendant, Journeymen Stone Cutters Association of North America, herein referred to as "General Union", is a voluntary association of mechanics engaged in the stone cutting trade which operates as an organized entity and conducts all of its business under the common name aforesaid; that said General Union has a Constitution, By-Laws, and Officers, and a large income which it derives by assessments upon its members; said Union has its principal headquarters and offices in the State of Indiana, in the City of Indianapolis, and a membership of about 5,000 persons; said membership is divided into over 150 local unions situated in different states of the United States and Canada, and each affiliated local is a

voluntary association having its own By-Laws, Officers, and an established income derived from the assessment of
8 its respective members; and each member of said affiliated local unions is also, by virtue thereof, a member of said "General Union"; said "General Union" and its locals claim jurisdiction throughout the United States and Canada over all stone cutters, carvers, curb cutters, curb setters, bridge cutters, planermen, latheman, carborundum moulding machine operators, engaged in the cutting, patching and fabrication of all stones and artificial stones; and the members of said "General Union" and affiliated local unions are engaged in said crafts.

Defendants, Michael W. Mitchell and Joseph Blasey, are citizens and inhabitants of the District of Indiana, residing at Indianapolis, and said Mitchell is the President and said Blasey is the Secretary-Treasurer of Journeymen Stone Cutters Association of North America.

Defendant, George Taylor, is a citizen of the State and District of Idaho, residing at Boise, in the State and District of Idaho.

Arthur MacPherson is a citizen and inhabitant of the State and District of Minnesota, residing at Minneapolis in the said State and District.

William J. Hagan is a citizen and inhabitant of the State and District of Illinois, residing at the City of Chicago in the said State and District.

James A. Gowen is a citizen and inhabitant of the State and District of Texas, residing at Fort Worth in said State and District.

Alex McDougall is a citizen and inhabitant of the State and District of Ohio, residing at Cleveland in said State and District.

Joseph Wall is a citizen and inhabitant of the State and District of New York, residing in New York City.

James Taylor is a citizen and inhabitant of the Dominion of Canada, residing at Montreal, Quebec, in said Dominion.

Alex Taylor is a citizen and inhabitant of the Dominion of Canada, residing at Winnipeg, Manitoba, in said Dominion.

James L. Smith is a citizen and inhabitant of the Dominion of Canada, residing at Toronto in said Dominion.

Said defendants, Taylor, MacPherson, Hagan, Gowen, McDougall, Wall, James Taylor, Alex Taylor, James L. Smith, constitute the General Executive Board of the Journeymen Stone Cutters Association of North America, and as such

they have the control of the business and affairs of said Association and represent and act for the said Association and
9 have been chiefly instrumental as a board and as a part of the organization known as Journeymen Stone Cutters Association of North America, in devising, planning and promulgating the rules, restrictions and prohibitions upon the membership of said Association, and in doing and causing to be done the matters and things hereinafter complained of by the plaintiff.

That at the office and place of business of said Association in the City of Indianapolis, State and District of Indiana, the said Journeymen Stone Cutters Association of North America maintains its principal offices and place of business, and a place where the meetings of said General Executive Board are held, and where its business is transacted, and where its corporate action averred in this complaint was taken.

Defendants, Bedford, Indiana Local; Bedford, Indiana Machinemen's Local; Bloomington, Indiana Local; Bloomington, Indiana, Machinemen's Local; Ellettsville, Indiana Local; and Stinesville, Indiana Local are each and every one of them affiliated local unions of the Journeymen Stone Cutters Association of North America, located in the Bedford-Bloomington District and composed of mechanics working in said District at some branch of the stone cutting trade.

That the defendants, George Givens, Patrick J. Murphy, Lloyd Hoopingarner, Oscar Peters, William Bahr, Henry Beard, W. P. Stein, Thomas Rush, Charles H. Goodall, Dean Acuff, are each and all citizens and inhabitants of the State and District of Indiana; that George Givens is President, Patrick J. Murphy, is Secretary and Lloyd Hoopingarner, Financial Secretary of the Bedford Indiana Local, Journeymen Stone Cutters Association of North America.

That Oscar Peters is Corresponding Secretary and William Bahr is Financial Secretary of Bedford, Indiana, Machinemen's Local, Journeymen Stone Cutters Association of North America.

That William Beard is President and W. P. Stein is Secretary of the Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America.

That Thomas Rush in the secretary of Bloomington Machinemen's Local, Journeymen Stone Cutters Association of North America.

That Charles H. Goodall, is Secretary of Ellettsville Indi-

ana Local, Journeymen Stone Cutters Association of North America.

10 That Dean Acuff is Secretary of Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America.

That in doing and performing and carrying out the objects and purposes of the defendants as set forth in this Bill, the said defendants have acted not only for themselves individually but as officers representing the membership composing said locals; all under the general direction of said General Union.

5. Said "General Union" and local unions claim and announce that the employes of the complainants, working at any of said occupations, over which the union claims jurisdiction, are working in opposition to said Union, and that said workmen, and their employers and their products are unfair. And the sole basis of said claim and announcement is that said employers are not members of said "General Union" and its appropriate local union.

6. The amount in dispute in this case as to each complainant exceeds the sum of $5,000., exclusive of interest and costs.

7. None of the defendants to this Bill of Complaint is or have been employed by the complainants, and none of the complainants have had any contractual relations with any of the defendant associations for over three years last past.

8. That Indiana Limestone is quarried and fabricated largely for building construction purposes. That the process of quarrying said stone consists in cutting the stone in rough blocks from the earth; that most of the quarriers also saw said blocks into appropriate sizes after its removal from the earth, and some of them perform the further process of planing said blocks, which is the process whereby said blocks are more accurately sized and made smoother in surface; that part of said stone so quarried, sawed and planed is shipped directly to buildings where it is fitted, trimmed and set into the building; that the balance is sold in the rough to cut stone contractors to be fabricated.

9. Cut Stone contractors fabricate said stone after it is quarried. Said work of fabrication includes planing, cutting, carving and turning in the lathes, and if so required, the further dressing of said stone to a final and smoother finish by the use of carborundum. All of the Complainant cut stone contractors who do not operate their own quarries, purchase the unfinished stone from the quarries; that said cut stone

contractors take said stone so purchased from the quar-
11 ries, or if they operate their own quarries, the stone so produced by their own quarries, and perform whatever other work of fabrication may be necessary to bring said stone to a form usable for building.

10. Each and every one of said Complainants engaged in business as quarriers employ sawyers, and each and every one of them, except Crescent Stone Company, Empire Stone Company, Mathers Stone Company, Monroe County Oolitic Stone Company, and Star Stone Company, also employ planermen, lathemen and other classes of workmen over which defendant unions claim jurisdiction; that each and every one of said Complainants, engaged in business as cut stone contractors, employ planersmen, lathemen, and stone cutters, each of which are of the craft or trade over which the Journeymen Stone Cutters Association of North America claims jurisdiction and also employ other workmen. And defendants claim and announce that each and every one of the Complainants are employing men who work in opposition to the "General Union" and the said local unions, and said claim and announcement is based solely on the fact that said men are not members of said union.

11. About 75% of Indiana Limestone produced by Complainants is sold in the rough or semi-finished state to stone contractors outside of the State of Indiana and requires the services of skilled lathemen, planermen, stone cutters, and, in many instances, carvers, and the employment of fitters at the building in order to make said stone salable and usable for construction purposes.

Practically all the remaining 25% of the product of the Complainants is fabricated in the State of Indiana by those Complainants who are cut stone contractors, and is thereafter sold by said cut stone contractors to general building contractors, owners, and architects for use in building construction, and said stone so fabricated in Indiana usually requires the services of stone cutters and fitters at the building before it can be set and put to the practical uses for which it was produced and fabricated. That practically all of said finished or fabricated products sold by Complainants who are cut stone contractors is sold in interstate commerce to customers outside of the State of Indiana.

All of the rough and semi-finished stone sold by the Complainants is sold by them and each of them as a commodity to

contractors, builders, owners of buildings, and others, and
12 the Complainants do not assume or undertake any obligation to perform any work of further fabricating or installing said stone, but merely supply the material whereby the purchaser thereof carries out contracts for the fabrication and installation of said stone at the building.

12. About eighty (80) per cent of the total output of Indiana Limestone is produced by the Complainants and Shea & Donnelly Company, and about 20% is provided by socalled union or fair concerns working under agreement with the Journeymen Stone Cutters Association of North America and its local unions; about ninety-eight (98) per cent of said product of the Complainants is sold directly or indirectly to customers outside of the State of Indiana; that seventy-five (75) per cent of the output of the quarries of the respective Complainants is sold in the rough, sawed or semi-finished state directly in Interstate commerce to cut stone contractors outside of the State of Indiana and about twenty-five (25) per cent is finished by the quarrymen or sold to cut stone contractors, Complainants herein, within the State of Indiana; that seventy-five (75) per cent of the products of the Complainant quarriers and ninety-eight (98) per cent of the products of the complainant cut stone contractors, is sold in interstate commerce directly to customers outside of the State of Indiana.

13. That Indiana Limestone is produced exclusively and so far as is known, is found exclusively in the so-called "Bedford-Bloomington District" in the State of Indiana, and said District is a strip of land in Lawrence and Monroe Counties containing the towns of Bedford, Bloomington, Sanders, Oolitic, Ellettsville, Stinesville, Clear Creek, Peerles, Victor, Reeds Station, Smithville and Eureka. The total annual output of Indiana Limestone from said District approximates twelve million cubic feet, having a market value of nearly $20,000,000., as shipped from the District, of which Shea & Donnelly Company produces about five (5) per cent in volume.

14. That Indiana Limestone produced by the Complainants comes into interstate competition in the markets of different states with the Indiana Limestone produced by other quarriers and contractors in Bedford-Bloomington District, who work under agreement with said Journeymen Stone Cutters Association of North America and its local unions and are accordingly designated by defendants as fair and union con-

cerns. The amount of Indiana Limestone produced by
13 said union concerns is about twenty (20) per cent of the total production of Indiana Limestone. That said Indiana Limestone produced by Complainants also meets interstate competition in the markets of different States with other kinds of natural stone and many substitutes for natural stone, including artificial cast stone, and that the principal producers of artificial cast stone, none of which are located in the State of Indiana, work under a closed shop agreement with the Journeymen Stone Cutters Association of North America. One of the purposes of the combination and conspiracy hereinafter set forth is to prevent the sale and use in interstate commerce of Indiana Limestone produced by Complainants, in order to force architects, builders and contractors who otherwise would make interstate purchases of Complainants, to use Indiana Limestone produced by union concerns or artificial cast stone or other substituted products, in the production of which members of the Journeymen Stone Cutters Association of North America participate.

15. Prior to 1921 the Complainants were working under a written agreement with the Journeymen Stone Cutters Association of North American and the defendant unions and that said agreement with certain extensions thereof expired on April 30, 1921 and the Complainants and said union have since May 1st, 1921 never entered into or operated under any agreement with each other. The Complainants have since 1921 been operating under agreements with the Planermen's Union of Lawrence and Monroe Counties, which include the Bedford-Bloomington District, and Stone Cutters and Carvers Union of Lawrence and Monroe Counties which have no affiliation with the defendant unions, and, as is well known to the defendants, the existing agreements between said Complainants and said unions do not expire until some time in 1925 and 1926 respectively, that said unions of Lawrence and Monroe Counties with which Complainants are working are limited in their membershp to mechanics employed by quarrymen and cut stone contractors in said Bedford-Bloomington District; that there is not and has not been since 1921 any dispute or strike between the Complainants and its employes or the said unions of said employers and they are each and every one of them working peacefully with said unions of Lawrence and Monroe Counties on a basis of mutual satisfaction as employers and employes.

14 16. That most of the stone cutters throughout the United States, outside of Indiana, and particularly in the large industrial centers, are members of said General Union, and in all but a few of the largest industrial centers of the United States all building construction is conducted on the closed shop basis, whereby in every organized trade only members of the respective union of that trade are permitted to work, and in all such centers it is the general rule and practice in the event there is any attempt to employ a non-union man in any one of said organized trades, for all of the other trades employed on said building to join in sympathetic strikes against the employment of said non-union men. The business of over half of said cut stone contractors outside of the State of Indiana is operated on a so-called closed shop basis whereby only members of the Journeymen Stone Cutters Association of North America can be employed as planermen, lathemen, carvers, stone cutters, etc. and said contractors cannot continue their business on the present basis except with the permission of said unions.

17. For some time past said Journeymen Stone Cutters Association of North America, its officers and members, its affiliated local unions and their officers and members, have been engaged in a combination and conspiracy to prevent the pursuit or exercise of the grade of stone cutters, planermen, lathemen, trimmers, etc. by any person in any State in the United States who is not a member of said Journeymen Stone Cutters Association of North America and one of its local unions, and to prevent and restrain the Complainants and each of them from selling their products in interstate commerce because they will not agree to employ members of said Journeymen Stone Cutters Association of North America exclusively at the various branches of work over which said union claims jurisdiction, and knowingly and wilfully to induce, compel and coerce the Complainants and each of them to breach the written agreements under which they now operate with their employes and union of their employes.

18. That in pursuance of and for the purpose of making effective and furthering the aforesaid unlawful combination and conspiracy to restrain and prevent the Complainants and each and every one of them from engaging in interstate commerce and trade, the aforesaid conspirators have, either personally or through agents, authorized thereunto, agreed upon and done and threatened to do many unlawful and op-

pressive acts and are still threatening to do the same;
15 that among the many acts and means so agreed upon and done to further said combination and conspiracy, the conspirators have agreed upon and employed and are still employing and threatening to employ the following:

A. They have written into the constitution of the Journeymen Stone Cutters Association of North America the following: "No member of this association shall cut, carve, or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended". They have made it generally known to the members of said Journeymen Stone Cutters Association of North America and its local unions and to the public, that the employes of the Complainants are working in opposition to said union within the meaning of said provision of the constitution.

B. They have written notices to customers, or prospective customers, of the Complainants, and have caused various local unions of said stone cutters to issue such notices to customers, of which the following copy of one of such is a fair illustration:

"Journeymen Stone Cutters Association of N. A.
Toledo Ohio—Local,
1313 Navarre Ave.,
February 14th, 1924.

"The Albert Neukom Cut Stone Co.,
Toledo, Ohio.

Gentlemen:

Please be notified that on and after April 1st, 1924, that no member of the Journeymen Stone Cutters Association of N. A. shall cut, carve, or fit any material, planed or turned, shipped into this City (Toledo) by any Contractor or Firms not being recognized as fair to organized labor by the above named association, this action being taken at the last regular meeting held by the Toledo Local, Feb. 7th, 1924.

Yours truly,
JOHN SUCKLIN
Sec. Treas."

Said notices were intended by the defendants and understood by the said customers to refer to the Complainants as contractors or firms not recognized as fair to organized labor.

C. They have, from time to time, declared orally and in

writing to their membership and the trade generally, that
16 the Complainants are unfair, and that the stone produced by them is unfair because cut or worked upon by men working in opposition to said union, and they have published, or caused to be published, circulars and lists of stone producers and stone contractors which, expressly or by implication classify the Complainants and their products as unfair or objectionable to organized labor, and they have threatened or suggested that any architect, owner, building contractor or cut stone contractor who attempts to purchase and use materials produced by the Complainants, or any of them, will suffer labor troubles and inconvenience through strike of stone cutters employed by cut stone contractors in their places of business where said materials are fabricated, and strikes of stone cutters, and, in some cases of other building trades on buildings where such materials are used.

D. They have instigated, incited and joined in, and have threatened to instigate, incite and join in, strikes of stone cutters and other craftsmen upon buildings in states other than the State of Indiana, because materials produced by Complainants, or some one of them, were being, or were about to be installed thereon.

E. They have instigated, incited and joined in, and have threatened to instigate, incite and join in strikes of employes of cut stone contractors and carvers who have purchased, used or attempted to have work done upon stone produced by the Complainants or any of them.

F. They are attempting to bring about a condition whereby architects, contractors, owners of buildings, building contractors and cut stone contractors, who, in the ordinary transaction of their busines, require and are obliged to purchase materials of the kind and character produced by each of the Complainants, and who, in the absence of the conspiracy herein set forth, would purchase materials from the complainants in the ordinary course of interstate commerce, will be compelled and coerced by strikes and labor troubles caused by the defendants' conspiracy and by the fear and threat thereof, to refrain from purchasing or using materials produced by the Complainants, or any of them, and they have already been partially successful in so doing.

G. They are endeavoring wilfully to induce, compel and coerce the plaintiffs, and each of them, to violate and breach their contracts and working agreements with the Stone Cut-

ters and Carvers Union of Lawrence and Monroe Coun-
17 ties and the Planermen's Union of Lawrence and Monroe Counties, which agreements have been herein above described, and in effect have announced and threatened that they will continue to interfere with the business and interstate commerce of the Complainants and each of them until such time as they will breach and terminate said agreements and enter into agreements with the defendants.

H. They have knowingly and wilfully induced and attempted to induce employes, contractors and carvers under contract to work on the products of Complainants to breach and fail to carry out said contracts.

I. On or about July 7th, said Journeymen Stone Cutters Association of North America issued to all its locals and members a letter containing certain orders and directions, of which a copy is as follows:

"General Office
Indianapolis, Ind., July 7, 1924.

"To all Locals and Members of the G. U.
Brothers:

At a meeting of the Executive Board held June 27 and 28, 1924, the following resolution was unanimously adopted:

'That all our members are requested, on and after August 1, 1924, to refrain from working (dressing, altering, finishing, carving, or fitting on the building site) on any work that has been started—planed, turned, cut or semi-finished—by men working in opposition to our organization.

'This will not apply to any work done by men in the employ of Shea-Donnelly, or by men who may hereinafter be employed by said firm.'

By order of the Executive Board of
the Journeymen Stone Cutters' Association of N. A.

The above means that the privilege which was granted by the Cleveland Convention to our members to work on all work that came into their jurisdiction, regardless of by whom it was planed or cut, will be withdrawn August 1, 1924.

The convention gave that permission to our members in the belief that it would help bring about a settlement with the International Cut Stone Contractors' & Quarrymen's Association, but with the proviso that if there should be no settlement, then the privilege was to be withdrawn and our

members were to rigidly enforce the rule to keep off all
18 work started by men working in opposition to our organization, with the exception of the work of Shea-Donnelly, which firm holds an injunction against our association. As all efforts to bring about a settlement have proved futile, there remained nothing else for the E. B. to do than to follow out the instructions of the Convention, and name a date, which the Board has done.

Locals and members are cautioned that this order applies only to members of the G. U. The International organization forbids you to seek, or obtain, the aid of any other trade; do not give the opposition the opportunity they would wish to apply for an injunction on the grounds of a 'Secandary Boycott' if other trades not involved in the dispute are asked to come out in support of our organization after stone has moved in interstate commerce. You are also forbidden to write any letters to architects, builders, or general contractors, or others telling them such a firm is 'fair' or another 'unfair'. All you are asked to do is to keep off the work yourself, and the organization is perfectly within its moral and legal rights in doing so.

Fraternally yours,

JOSEPH BLASEY,

Gen. Sec."

J. The Complainants and each of them have outstanding contracts for the sale of stone, which contracts the defendants are placing in jeopardy by reason of the acts herein set forth, and strikes and interferences have taken place within the last few weeks in connection with the fabrication, carving, and installation of stone in the states of Colorado, Illinois, New Jersey, Minnesota, Michigan, and Indiana, because of the activities of the defendants, and the president of the General Union has announced that the rule against handling of stone produced by the Complainants is to be promptly enforced in every part of the country without discrimination, except as to Shea & Donnelly Company, which is working under protection of an injunction of this court.

19. On account of the aforesaid combination and conspiracy and the acts performed in furtherance thereof and on account of said interference with the sale, transportation, and use of the products of the Complainants in interstate commerce, many architects, builders, owners, contractors, and

others who desire to and otherwise would purchase the
19 products of the said Complainants for use outside of the State of Indiana, are prevented, deterred, and intimidated from so doing because of the fear that the defendants may cause strikes of stone cutters and other trades to take place either in the establishments of cut stone contractors or on the buildings where said stone is to be used, thereby causing great loss and damage to them and the people with whom they deal. Because of said facts, each and every one of the Complainants are directly and similarly injured and affected by the aforesaid combination, have their interstate commerce restrained, prevented, obstructed and interfered with, to the great and continuing irreparable injury and damage to each of the Complainants respectively in excess of $5,000., exclusive of interest and costs.

20. It is impracticable for the Complainants to secure adequate remedy at law against the aforesaid acts and conspiracy because it would be necessary for Complainants to bring a multiplicity of suits against a great number of persons engaged in said conspiracy and the Complainants have no adequate remedy at law for the additional reason that even if they were to prosecute actions against the conspirators, it would be impossible for them to prove the total amount of their damage in accordance with the strict proof required by law and because the amount of damages sustained by the Complainants would be so great that the defendants would be unable to respond in the amount thereof. Because of said reasons and others the injury and damage caused each and every one of the complainants is continuous and irreparable and incapable of estimate or definite proof in actions of law.

Each of the Complainants has valuable contracts outstanding whereby each of them has agreed to furnish stone for building purposes, and each of the Complainants has contracts outstanding whereby he has already furnished said stone, for which it has not yet received payment and which has not yet been installed in the building by the purchasers thereof. That a substantial part of said stone which has already been delivered has not yet been installed in the buildings for which it is intended by the purchasers thereof is now being installed or is about to be installed in buildings of conspicuous importance, and, if, through the actions of the defendants as herein described, said building operations are stopped or interfered with on account of the fact that said stone has been furnished by the Complainants, or some

one of them, said difficulties will become widely known,
20 and the good will of the business of the Complainants' irreparably injured. Because of the conditions described in this paragraph, the enforcement of the orders issued by the defendants threaten to and do delay, interfere with, prevent, and delay the performance of contracts by the vendees of the Complainants solely because the said vendees have purchased the products of the Complainants.

And of the aforesaid acts, doings and pretenses of the said defendants and those working in conjunction with them are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of Complainants and each of them in the premises.

In consideration whereof and for as much as Complainants are remediless in the premises, by the strict rules of common law and only relievable in a court of equity where matters of this nature are cognizable and relievable, complainants pray the relief of this Honorable Court:

That the defendants, Journeymen Stone Cutters Association of North America; Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America and Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America, and they and each of their agents, servants, attorneys, confederates and the members of the defendant associations, and all persons acting in aid of or in conjunction with them or any of them, be restrained and enjoined from:

Combining and conspiring to interfere with the sale, transportation, delivery, fabrication, installation or use of stone products, quarried or fabricated by Complainants or any one of them.

Combining and conspiring together not to handle or work upon stone quarried or fabricated by Complainants or any one of them, or causing or inducing others so to do.

From enforcing or attempting to enforce any rule, regulation or penalty against any person who handles, uses or

works upon stone quarried or fabricated by the complain-
21 ants or any one of them, or who works upon any build-
ing where said stone is being installed or about to be installed.

From inducing or attempting to induce any person or persons whomsoever to decline employment or cease employment or not to seek employment under any person, firm or corporation because said person, firm or corporation may have purchased or purposes to purchase materials from the Complainants or any one of them or because the materials furnished by the Complainants, or any of them, were being used on or in connection with some building where said persons are working and from in any way wilfully inducing or attempting to induce any person or persons to refuse to install, handle or work upon materials manufactured by the Complainants or any of them, or to refuse to work upon or in connection with any building where such materials were being used or were about to be used.

From making, communicating, or circulating any statement, orally or in writing, that the defendants or members of any union of working men will refuse to work upon materials produced by the Complainants or any one of them, or upon buildings where such materials are used or are about to be used.

From giving notice verbally or in writing to any person, firm or corporation to refrain from purchasing or using or from carrying out contracts for the purchase or use of materials produced by Complainants or any of them under threats or suggestions that if such merchandise is purchased or used or said contracts are carried out, they will cause the person so notified loss or trouble or inconvenience or that they will cause persons employed by those notified to withdraw from their employment or to discontinue services on buildings where persons so notified are doing work.

From publishing, circulating or otherwise communicating directly or indirectly, orally or in writing, to each other or to any other person, firm or corporation, any statement or notice of any kind or character whatsoever calling attention to the fact that the Complainants or any of them or their products or the products of any of them were, are, or have been declared unfair or are in any way unfair or that said products should not be patronized, dealt in or worked upon because made in an open shop or made by employes working in oppo-

sition to the Journeymen Stone Cutters Association of North America.

22 From conspiring, agreeing or combining together to restrain or destroy the interstate business or trade of the Complainants or any of them, in order to compel them to breach their contracts with the Stone Cutters and Carvers Union of Lawrence and Monroe Counties, and the Planermen's Union of Lawrence and Monroe Counties, or for the purpose of compelling the Complainants to employ only members of the defendants' unions in certain specified departments, and from doing any and all acts to interfere with or discourage the sale or use of the products of the complainants or any of them.

From inducing or attempting to induce any employes, contractors or carvers to violate agreements or contracts to perform work on stone produced by Complainants.

From attempting to do any of said acts and from using any and all ways, means and methods of doing any of the aforesaid forbidden acts and from doing any of said acts either directly or indirectly or through by-laws, orders, directions or suggestions to committees, associations, officers, agents or otherwise.

That until the further order of this Court, a temporary injunction and decree for the relief herein prayed for be issued out of this Court.

That each of the complainants respectively recover therefor damages of the defendants for all losses which each respectively proves to have suffered and that such damages be determined in such manner as may be directed by this Court.

That this Court grant unto Complainants a writ of subpoena of the United States of America issued out of and under the seal of this Honorable Court and directed to the aforesaid defendants, and each of them, thereby commanding them and each of them on a certain day therein to be named and under a certain penalty to be and appear before this Honorable Court, then and there to answer all and singular, but not under oath which is hereby expressly waived, in regard to the premises and to respond to, affirm and abide by such order, direction and decree as may be made against it or them or any of them in the premises, and as shall seem meet and agreeable to equity and good conscience.

That the Complainants have such other and further
23 relief in the premises as the nature and circumstances of this case may require and to this Court may seem meet and proper.

CHARLES MARTINDALE,
Solicitor for Plaintiffs.

WALTER GORDON MERRITT,
165 Broadway, New York,
Of Counsel.

State of Indiana, } ss.
County of Lawrence. }

CLINTON S. NORTON, being duly sworn upon his oath says that he is the President of the Bedford Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

CLINTON S. NORTON.

Subscribed and sworn to before me this 24th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Illinois } ss.
County of Cook }

WILLIAM ROBERT MAHAN, being duly sworn upon his oath says that he is the President of The Central Oolitic Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

WILLIAM R. MAHAN.

Subscribed and sworn to before me this Sept. 27-24 day of September, 1924.

JOSEPH F. HAJCH JR.,
Notary Public.

(Seal)

My commission expires Feb. 25, 1926.

24 State of Indiana }
County of Monroe. } ss.

WILLIAM H. JOHNSON, being duly sworn upon his oath says that he is the Secretary of The Chicago & Bloomington Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

WILLIAM H. JOHNSON.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

State of Indiana, }
County of Lawrence. } ss.

AUGUSTUS E. DICKINSON, being duly sworn upon his oath says that he is the President of The Consolidated Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

AUGUSTUS E. DICKINSON.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

State of Indiana }
County of Monroe. } ss.

IRVIN S. MATTHEWS, being duly sworn upon his oath says that he is the President of Crescent Stone Company, one of the plaintiffs in the above entitled Bill of Complaint;

that for and on behalf of the said plaintiff he has read
25 the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

IRVIN S. MATTHEWS.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana, } ss.
County of Lawrence. }

CHRIS D. DONATO, being duly sworn upon his oath says that he is the President of C. D. Donata Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

CHRIS D. DONATO.

Subscribed and sworn to before me this 24th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana } ss.
County of Monroe. }

FRANK E. MATTHEWS, being duly sworn upon his oath says that he is the Manager of Empire Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

FRANK E. MATTHEWS.

Subscribed and sworn to before me this 29th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

26 State of Indiana, } ss.
County of Lawrence. }

JEROME W. FALT, being duly sworn upon his oath says that he is the Vice President of J. P. Falt Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

JEROME W. FALT.

Subscribed and sworn to before me this 29th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

State of Indiana } ss.
County of Lawrence. }

RUDOLPH M. RICHTER, being duly sworn upon his oath says that he is the Secretary of The Furst-Kerber Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

RUDOLPH M. RICHTER.

Subscribed and sworn to before me this 29th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

State of Indiana, } ss.
County of Monroe. }

BIRD G. HOADLEY, being duly sworn upon his oath says that he is the President of J. Hoadley & Sons Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said
27 Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

BIRD G. HOADLEY.

Subscribed and sworn to before me this 29th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana } ss.
County of Lawrence. }

MARTIN J. MORGAN, being duly sworn upon his oath says that he is the President of The Imperial Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

MARTIN J. MORGAN.

Subscribed and sworn to before me this 24th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Illinois } ss.
County of Cook }

THOMAS JOSEPH VERNIA, being duly sworn upon his oath says that he is Vice President of Indiana Quarries Company, one of the plaintiffs in the above entitled Bill of Com-

plaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

THOMAS J. VERNIA.

Subscribed and sworn to before me this 26th day of September, 1924.

O. C. MILLER,
(Seal) *Notary Public.*

My commission expires May 13th, 1928.

28 State of Indiana }
County of Lawrence } ss.

MAURICE F. McGRATH, being duly sworn upon his oath says that he is the President of Inter-State Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

MAURICE F. McGRATH.

Subscribed and sworn to before me this 24th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

State of Indiana, }
County of Lawrence. } ss.

WILLIAM M. McMILLAN, being duly sworn upon his oath says that he is the President of W. McMillan & Son, one of the plaintiffs in the above entitled Bill of Complaint that for and on behalf of the said plaintiff he has read the Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

WILLIAM M. McMILLAN.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana } ss.
County of Monroe. }

FRED MATTHEWS, being duly sworn upon his oath says that he is the President of Matthews Brothers Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the Bill of Complaint and knows the contents there-
29 of; that the matters and facts therein averred are true as he verily believes.

FRED MATTHEWS.

Subscribed and sworn to before me this 29th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana, } ss.
County of Monroe. }

IRVIN S. MATTHEWS, being duly sworn upon his oath says that he is the President of Mathers Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

IRVIN S. MATTHEWS.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana } ss.
County of Monroe. }

BENJAMIN F. ADAMS, being duly sworn upon his oath says that he is the Treasurer of Monroe County Oolitic Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

BENJAMIN F. ADAMS.
B. F. ADAMS.

Subscribed and sworn to before me, this 29th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

30 State of Indiana, } ss.
County of Monroe. }

SIMEON C. FREESE, being duly sworn upon his oath says that he is the Secretary-Treasurer of National Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

SIMEON C. FREESE.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
(Seal) *Notary Public.*

My commission expires May 9, 1926.

State of Indiana } ss.
County of Monroe. }

EUGENE H. R. PERRY, being duly sworn upon his oath says that he is the Secretary-Treasurer of the Perry Stone Company, one of the plaintiffs in the above entitled Bill of

Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

EUGENE H. R. PERRY.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana, } ss.
County of Monroe. }

ROBERT REED, being duly sworn upon his oath says that he is the President of Reed-Powers Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said
31 Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

ROBERT REED.

Subscribed and sworn to before me this 25th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana, } ss.
County of Monroe. }

JOHN A. ROWE, being duly sworn upon his oath says that he is the President of John A. Rowe Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of the said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

JOHN A. ROWE.

Subscribed and sworn to before me this 24th day of September, 1924.

ELMA C. WALTERS,
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Illinois } ss.
County of Cook }

FRANKLIN T. BRODIX, being duly sworn upon his oath says that he is the Secretary of Star Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

FRANKLIN T. BRODIX.

Subscribed and sworn to before me this 26th day of September, 1924.

HARRY M. LINCOLN,
(Seal) *Notary Public.*

My commission expires

My Commission Expires January 29, 1927.

32 State of Illinois } ss.
County of Cook }

HENRY STRUBLE, being duly sworn upon his oath says that he is the President of Henry Struble Cut Stone Company, one of the plaintiffs in the above entitled Bill of Complaint; that for and on behalf of said plaintiff he has read the said Bill of Complaint and knows the contents thereof; that the matters and facts therein averred are true as he verily believes.

HENRY STRUBLE.

Subscribed and sworn to before me this 27th day of September, 1924.

RALPH SCARRITT,
(Seal) *Notary Public.*

My commission expires July 7th, 1925.

And afterwards, to wit: at the May Term of said Court, on the same day, being the 2nd day of October, 1924, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to wit:

And thereupon there issued out of the office of the Clerk of said Court a writ of subpoena in chancery for each of the said defendants, which said writ of subpoena was on this 2nd day of October, A. D. 1924, delivered to the United States Marshal for this District, which subpoena together with the Marshal's return endorsed therein is in the words and figures following, to wit:

33 UNITED STATES OF AMERICA

District of Indiana

The President of the United States of America, to the Marshal of the District of Indiana, Greeting:

You are hereby commanded to summon:

Journeymen Stone Cutters Association of North America.
Michael W. Mitchell, individually and as President of the Journeymen Stone Cutters Association of North America.
Joseph Blasey, individually and as Secretary and Treasurer of Journeymen Stone Cutters Association of North America.
George Taylor.
Arthur MacPherson.
William J. Hagan.
James A. Gowen.
Alex MacDougall.
Joseph Wall.
James Taylor.
Alex Taylor.
James L. Smith.
Each and respectively, individually and as constituting the General Executive Board of Journeymen Stone Cutters Association of North America.
Bedford, Indiana Local, Journeymen Stone Cutters Association of North America.
George Givens, individually and as President of Bedford,

Indiana Local, Journeymen Stone Cutters Association of North America.

Patrick J. Murphy, individually and as Corresponding Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America.

Lloyd Hoopingarner, individually and as Financial Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America.

Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America.

Oscar Peters, individually and as Corresponding Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America.

William Bahr, individually and as Financial Secretary
34 of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America.

Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America.

Henry Beard, individually and as President of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America.

W. P. Stein, individually and as Secretary of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America.

Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America.

Thomas Rush, individually and as Secretary of Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America.

Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America.

Charles H. Goodall, individually and as Secretary of Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America.

Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America.

Dean Acuff, individually and as Secretary of Stinesville Indiana Local, Journeymen Stone Cutters Association of North America.

if they be found in your district, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Indianapolis, on the 22nd day of October next, to answer a certain bill in equity filed and exhibited in said Court against them by Bedford Cut Stone Company et al.

Hereof they are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Honorable Albert B. Anderson, Judge of said Court, and the seal thereof, this 2nd day of October, A. D. 1924.

WILLIAM P. KAPPES,
Clerk.

(Seal)

Memorandum.

The said defendants are required to file their answer or other defense in this suit in the Clerk's Office of said Court on or before the twentieth day after service, excluding
35 the day thereof; otherwise the said Bill may be taken pro confesso.

WILLIAM P. KAPPES,
Clerk.

District of Indiana

I received this writ at Indianapolis, Ind., Oct. 6, 1924, and served the same as follows: Upon the Journeymen Stone Cutters Association, of North America, by reading the same to and within the hearing of, and by delivering a true copy of this writ, together with copy of Notice, to Michael W. Mitchell, president of said association; and I served the same personally and by copy, with copy of Notice, upon Michael W. Mitchell, individually, and upon Joseph Blasey, individually and as Secretary and Treasurer of Journeymen Stone Cutters Ass'n of North America, and upon George Taylor, Arthur McPherson, William J. Hagan, James A. Gowen, Alex MaxDougall, Joseph Wall, James Taylor, Alex Taylor and James L. Smith, individually and as constituting the General Executive Board of Journeymen Stone Cutters Ass'n of North America; all at Indianapolis, Marion County, Indiana, October 6, 1924;

And I served the Bedford, Indiana, Local Journeymen Stone Cutters Ass'n of North America, by reading the same to and within the hearing of and by delivering a true copy of this writ, with copy of Notice, to George Givens, president of said Bedford Local Journeymen Stone Cutters Ass'n; and I served the same personally and by copy, with copy of Notice, upon George Givens, individually, and Patrick J. Murphy,

individually and as Corresponding Secy of Bedford, Indiana Local Journeymen Stone Cutters Ass'n; and upon Lloyd Hoopingarner, individually and as Financial Secretary of Bedford, Indiana Local Journeymen Stone Cutters Ass'n. by leaving a true copy of this writ, with copy of Notice, at his last and usual place of residence, in the hands of an adult person; and upon the Bedford, Indiana, Machinemen's Local, Journeymen Stone Cutters Ass'n of North America, by reading the same to and within the hearing of, and by delivering a true copy of this writ to Oscar Peters, secretary of said local Ass'n, he being the highest officer of said local ass'n found in my district; and personally and by copy upon Oscar Peters, individually, and William Bahr, individually and as
Financial Secy of Bedford, Indiana, Machinemen's Local
36 Journeymen Stone Cutters Ass'n; all at Bedford, Lawrence County, Indiana, Oct. 9, 1924;

And I served the Bloomington, Indiana Local, Journeymen Stone Cutters Ass'n of North America, by reading the same to and within the hearing of and by delivering a true copy of this writ, with copy of Notice, to Henry Beard, president of said local Ass'n; and I served the same personally and by copy, with copy of Notice, upon Henry Beard, individually and upon W. P. Stein, individually and as Secretary of said Bloomington Indiana Local Ass'n; and upon Bloomington, Indiana Machinemen's Local Journeymen Stone Cutters Ass'n of North America, by reading the same to and within the hearing of, and by delivering a true copy of this writ with a copy of Notice, to Thomas Rush, secretary of said ass'n, he being the highest officer of said ass'n found in my district; and upon Thomas Rush, individually, personally and by copy, with copy of Notice; all at Bloomington, Monroe County, Indiana, October 9, 1924.

And I served the Ellettsville, Indiana Local, Journeymen Stone Cutters Ass'n of North America, by reading the same to and within the hearing of and by delivering a true copy of this writ, with copy of notice, to Charles H. Goodall, secretary, he being highest officer found in my district, and upon Charles H. Goodall, individually, personally and by copy with copy of Notice; at Ellettsville, Monroe Co., Indiana, Oct. 8, 1924.

And the Stinesville, Indiana Local, Journeymen Stone Cutters Ass'n, personally and by copy, with copy of Notice, upon Dean Acuff, Secretary, he being highest officer found in my district; and upon Dean Acuff, individually, personally

and by copy, at Stinesville, Monroe County, Indiana, October 8, 1924.

L. P. MEREDITH,
U. S. Marshal.
By S. T. HICKMAN,
Deputy.

Marshal's Costs:	
42 Serv of Spa in Chancery	$84.00
42 Serv of copy of Notice	84.00
Expense	17.65
	185.65

37 (Endorsed on back of subpoena)

* * * * * *

Returnable
22nd day of October 1924.
Filed Oct 20, 1924 I
At M
William P. Kappes, Clerk
Charles Martindale
Walter Gordon Merritt
Complainant's Solicitor.

38 And afterwards towit at the November Term of said Court on the 5th day of March, 1926, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Come now the defendants by their solicitors and file answer to bill of complaint, which answer is as follows:

40 * * * * * *

ANSWER OF DEFENDANTS TO COMPLAINANTS' BILL OF COMPLAINT.

The defendants, for answer to complainants' Bill of Complaint, allege and say:

1.

Defendants admit that complainants are corporations and are engaged in business as alleged in their Bill of Complaint.

2.

Defendants admit that each and every one of the com-
41 plainants quarry or fabricate, or both quarry and fabricate, Indiana limestone in the so-called Bedford-Bloomington District in the State of Indiana.

Further answering, defendants say that they admit that the number of employes employed by complainants and amount of capital invested and sales made by complainants in interstate commerce and aggregate sales of complainants are substantially true as alleged.

3.

Defendants further admit that complainants and Shea & Donnelly Company constitute all the quarriers and cut-stone contractors in the Bedford-Bloomington District, producing or fabricating Indiana limestone and not working under agreements with the defendant unions, save and except Hoosier Cut Stone Company and Hoadley Stone Company.

Defendants further admit that said Shea & Donnelly Company, heretofore brought suits in the District Court of the United States for the Eastern District of Missouri and in the District Court of the United States for the District of Indiana and secured injunctions in both districts, which are now outstanding, against interference with its business but deny that such injunctions against interference with its business were granted on account of acts of the same character as described in complainants' Bill of Complaint.

42 Defendants further admit that said Shea & Donnelly are expressly excepted from the operation of the order of the defendant, Journeymen Stone Cutters Association of North America, under date of July 7, 1924, as set out in subdivision I of Paragraph 18 of Complainants' Bill of Complaint.

4.

Defendants admit that the defendant, Journeymen Stone-Cutters Association of North America, called the "General Union," is a voluntary association of mechanics engaged in the stone-cutting trade and that it operates as an organized entity in the manner alleged in said Bill of Complaint and that its principal headquarters and offices are located in the

City of Indianapolis, Indiana; that it has a membership of about 5000 persons divided into over 150 local unions situated in different states of the United States and Canada, a list of which locals is attached hereto, marked Exhibit 1, and made a part hereof, and that each affiliated local union is a voluntary association and operates as alleged in said Complainants' Bill of Complaint.

Defendants further deny that said "General Union" and its affiliated locals claim jurisdiction throughout the United States and Canada, over all stone-cutters, carvers, curb-cutters, curb-setters, bridge-cutters, planermen, lathemen and carborundum moulding machine operators engaged in the cutting, patching and fabrication of all stones and artificial stones but defendants allege and say that said "General Union" and its affiliated local unions do claim jurisdiction over stone-workers, belonging to aforesaid classes, who are members of said local unions and thereby members of said "General Union" under the terms and provisions of the constitutions and by-laws of said "General Union" and its said affiliated local unions.

43 Defendants admit that the members of said "General Union" and affiliated local unions are engaged in the crafts described.

Defendants further admit the citizenship and residence of the several defendants and the respective official positions held by them in the said defendant, Journeymen Stone Cutters Association, as alleged in complainants' complaint and admit that defendants, Taylor, MacPherson, Hogan, Gowen, McDougall, Wall, James Taylor, Alex Taylor and James L. Smith constitute the General Executive Board of said Journeymen Stone Cutters Association and as such have control of the business and affairs of such association and represent and act for and on behalf of such Association but defendants deny that such defendants as such General Executive Board have been chiefly instrumental as a board in devising, planning and promulgating the rules, restrictions and prohibitions upon the membership of said Association and in doing and causing to be done the matters and things complained of in complainants' complaint.

Said defendants further allege the fact to be that said General Executive Board, in promulgating the rules, restrictions and prohibitions upon the membership of said Association and particularly in promulgating the order of July 7, 1924, which is the basis of complainants' Bill of Complaint, said

Executive Board acted under instructions regularly adopted, at the tri-annual convention of said Association, held at Cleveland, Ohio, in the month of October, 1923, and that in doing and causing to be done the matters and things complained of in complainants' complaint, said Executive Board was only carrying out the instructions of the membership of the "General Union" and its affiliated local unions in convention assembled and that the same is true of the defendant officials of said affiliated local union.

44 5.

Defendants, answering the fifth paragraph of complainants' complaint, say that they have never denominated complainants nor their employes nor their products as "unfair" nor circulated any lists to said effect but have refused to work upon the product produced by complainants by laborers, who are eligible to membership in defendant unions; that defendants have never refused to work upon and have at all times and are now working upon products produced by complainants by laborers who are not eligible to membership in defendant unions.

6.

Defendants deny the allegation that the amount in dispute in this case as to each complainant exceeds the sum of $5000.00 exclusive of interest and costs and allege and say that no actionable wrong has been committed by defendants or any of them for which complainants are entitled to recover damages in any sum or amount.

7.

Defendants admit that none of the defendants are now employed by complainants and have had no contractual relations with complainants for over three years last past.

8.

Defendants admit that Indiana Limestone is quarried and fabricated in the manner set out in Paragraph 8 of complainants' Bill of Complaint and is shipped and sold as therein described.

9.

Defendants admit that cut stone contractors fabricate said stone after it is quarried by planing, cutting, carving and turning in the lathes and, if required, by dressing said
45 stone by the use of carborundum, and that complainant cut-stone contractors, who do not operate their own quarries, purchase stone from the quarries and perform whatever other work of fabrication may be necessary to bring said stone to a form usable for building and so fabricate the stone produced by their own quarries.

10.

Defendants admit that each and every one of the complainants engaged in business as quarriers employ sawyers and that each and every one of them, except Crescent Stone Company, Empire Stone Company, Mathers Stone Company, Monroe County Oolitic Stone Company and Star Stone Company also employ planermen, lathemen and other classes of workmen who are eligible to membership in defendant unions and that each and every one of said Complainants, engaged in business as cut-stone contractors, employ planermen, lathemen and stone-cutters and that such classes of workmen are eligible to membership in the defendant, Journeymen Stone Cutters Association and that said complainants employ other workmen.

Defendants admit that they claim that complainants are employing men who work in opposition to the "General Union" and said local unions and that such claim is based solely upon the fact that said men are not members of said union but defendants further answering say that by reason of said employment of said men who are not members of said union defendants do not claim or announce that all their products are produced by men working in opposition to the union and are not refusing to work on those products produced by labor ineligible to membership in the defendant unions.

46 11.

Defendants neither admit nor deny the allegations in the eleventh paragraph of complainants' Bill of Complaint and leave complainants to their proof.

Defendants specifically say, however, that the stone fabricated by complainants and sold to general building contractors, owners and architects for use in building construction sometimes requires the services of stone-cutters and fitters at the building where the plans and specifications for the building are defective or incomplete.

12.

Defendants neither admit nor deny the allegations contained in Paragraph Twelve of Complainants' Bill of Complaint and leave Complainants to their proof.

13.

Defendants admit the allegations contained in paragraph thirteen of the Bill of Complaint are substantially correct.

14.

Defendants admit that the limestone produced by complainants comes into interstate competition with limestone produced by other quarriers and contractors in the Bedford-Bloomington District, who work under an agreement with defendant unions but deny that such other quarriers and contractors are designated by defendants as fair and union concerns.

Concerning the amount of the output of the concerns designated by complainants as "union concerns", defendants say that they have no knowledge or belief.

47 Defendants admit that the products of Complainants come into competition in the markets of different states with other kinds of natural stone and their substitutes and artificial cast stone and that the principal producers of artificial cast stone are not located in Indiana and work under a closed shop agreement with the defendant "General Union."

Defendants deny the existence of any combination and conspiracy as alleged in the Bill of Complaint and deny the existence of any purpose upon their part to prevent the sale and use in interstate commerce of Indiana Limestone produced by Complainants in order to force architects, builders and contractors who otherwise would make interstate purchases of Complainants, to use Indiana Limestone, artificial cast stone or other substitute products in the production of which

members of the Journeymen Stone Cutters Association of North America participate and defendants demand proof thereof.

15.

Defendants admit that part of the allegations of paragraph fifteen of the Complaint which alleges that prior to 1921 the Complainants worked under a written agreement with the defendant "General Union" and defendant local unions and that said agreement and its extensions expired April 30, 1921, and that since said time, complainants and defendants have not entered into or operated under any agreement.

Defendants admit that since 1921, the Complainants have been operating under agreements with the unions named in said paragraph and that said unions have no affiliation with the defendant unions and that such unions of Lawrence and Monroe Counties are limited in their membership to me-
48 chanics employed by quarrymen and cut-stone contractors in the Bedford-Bloomington District and that there is not and has not been any dispute or strike between Complainants and their employes or the unions of said employers and that complainants and said unions and employes are working peacefully together.

Defendants say that they have no knowledge as to when the agreements existing between Complainants and said unions of Lawrence and Monroe Counties expire.

And defendants further answering say that the said alleged labor unions described in this paragraph of complaint as the "Planermen's Union of Lawrence and Monroe Counties" and the "Stone Cutters and Carvers Union of Lawrence and Monroe Counties" are owned, operated and controlled by Complainants; that said Complainants organized what was known as the "Bedford Stone Club" and through the vehicle of said "Club" organized said alleged labor unions and do now own, operate and control said alleged unions and that in truth and in fact, neither of said organizations are labor unions as defined and recognized at law.

16.

Further answering, defendants say that they admit the allegation that most of the stone-cutters throughout the United States outside of Indiana, and particularly in the large industrial centers are members of said "General Union" and ad-

mit that in all but a few of the largest industrial centers of the United States all building construction is conducted on the closed shop basis, whereby in every organized trade only members of the respective union of that trade are per-
49 mitted to work but deny that it is the general rule and practice in the event there is any attempt to employ non-union men in any one of said organized trades for all of the other trades employed in said building to join in "sympathetic strikes" against the employment of said non-union men.

And defendants say that in no instance has a sympathetic strike been called by reason of the refusal of the members of the defendant unions to work on the products of the complainants as hereinbefore described and that in no instance has a sympathetic strike been called by any labor union by reason of the employment of non-union labor to work upon complainants' product in any building, and in no instance have sympathetic strikes been threatened and that the allegations of the complaint as to the alleged general rule and practice have no application to the facts and conditions which have followed the refusal of defendants to work upon the product of complainants.

Defendants further say that not more than one-fifth of said cut-stone contractors outside of the State of Indiana operate on a so-called closed-shop basis whereby only members of the said "General Union" can be employed as planermen, lathemen, carvers, stone-cutters, etc. and further deny that said contractors cannot continue their business on the present basis except with the permission of said unions and leave Complainants to their proof thereof, and further say that more than 50% of complainants' shipments, consisting of blocks, slabs and sawed work, is not affected by the order in question.

17.

Defendants further say that they deny that for some time past said Journeymen Stone Cutters Association of North America, its officers and members, its affiliated local unions and their officers and members, have been engaged in a
50 combination and conspiracy to prevent the pursuit or exercise of the trade of stone-cutters, planermen, lathemen, trimmers, etc., by any person in any state in the United States who is not a member of said "General Union" and one of its local unions.

Answering further, said defendants say that they have neither said nor done anything to prevent the pursuit or exercise of any of the aforesaid trades by any person and have not interfered with the employment of non-union men upon the products of complainants and that aside from refusing to work upon the aforesaid products, such defendants have not in any manner interfered with its installation or with the men or class of men employed upon such installation.

Defendants further deny that they have been engaged in a combination and conspiracy to prevent and restrain complainants and each of them from selling their products in interstate commerce, because such complainants will not agree to employ members of said "General Union" exclusively in the various branches of work over which said union claims jurisdiction and deny that they have been engaged in a combination and conspiracy to induce, compel and coerce complainants and each of them to breach the written agreements with their employes and said alleged union of their employes.

51 18.

Defendants further deny that in pursuance of any unlawful combination and conspiracy or for the purpose of making effective and furthering any unlawful combination or conspiracy attempted to be alleged in the Bill of Complaint to restrain and prevent Complainants and each of them from engaging in interstate commerce and trade, that they, said defendants, have either personally or through agents thereunto authorized, agreed upon and done or threatened to do any unlawful or oppressive act; and

A. Defendants admit that the membership of the said General Union by and through their representatives in convention assembled, wrote into the Constitution of said General Union the following: "No member of this Association shall cut, carve, or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended", and deny that they have made it generally known to the public that the employees of the complainants are working in opposition to said union, within the meaning of said provision of the constitution, but admit that they have made said fact generally known to the members of said "General Union" and its local unions.

Defendants further answering say that said clause in said

constitution was adopted many years previous to May 1, 1921, and that said provision in said constitution was regularly and formally adopted and continued in force by the regular triannual conventions of the membership of said general union and its local unions, and that said provision of said constitution has been in full force and effect, as aforesaid, for many years prior to 1921, and was not passed and adopted in
52 contemplation of the attitude of complainants herein toward these defendants.

B. Defendants deny that they have written notices to customers, or prospective customers, of the Complainants, and have caused various local unions of said stone-cutters to issue such notices to customers.

Further answering, defendants say that the copy of the letter set out in Sub Division B of Paragraph 18 of Complainants' Bill of Complaint, alleged to have been written by one John Sucklin, Secretary-Treasurer of the local union, located at Toledo, Ohio, was wholly unauthorized by any of the defendants herein, and that such Secretary-Treasurer, under the Constitution and By-laws of said "General Union" and of local unions, was wholly unauthorized to write such letter, and that these defendants had no knowledge of such letter until after the institution of this suit.

C. Defendants deny that they have declared orally and in writing to their membership and the trade generally that the complainants herein are unfair and deny that they had declared, orally or in writing that the stone produced by complainants is unfair, but allege the fact to be that they have only declared that stone unfair which is produced by complainants by labor elligible to membership in the defendants unions.

Defendants further deny that they have published or caused to be published circulars and lists of stone-producers or stone-contractors which expressly or by implication classified the complainants or their products as unfair or objectionable to organized labor, and further deny that they have threatened or suggested that any architect, owner, building contrac-
53 tor or cut-stone contractor, who attempts to purchase and use materials produced by the complainants or any of them will suffer labor troubles and inconvenience, through strikes of stone-cutters employed by cut-stone contractors in their places of business where said materials are fabricated and strikes of stone-cutters, and further deny that they have threatened or suggested that any such architect, owner or con-

tractor will suffer strikes upon the part of other building trades on buildings where such materials are used.

D. Defendants deny that they have instigated, incited and joined in, and have threatened to instigate, incite and join in, strikes of stone-cutters and other craftsmen upon buildings in states other than the State of Indiana, because materials produced by complainants, or some of them, were being or were about to be installed thereon, but allege the fact to be that said defendants have, pursuant to the general order of the general executive committee, hereinbefore set out, simply refused to work upon that class of stone, herein repeatedly described.

E. Defendants deny that they have instigated, incited and joined in and have threatened to instigate, incite and join in strikes of employees of cut-stone contractors and carvers who have produced, used or attempted to have work done upon stone produced by complainants or any of them, but allege the fact to be that they have in no instance instigated or incited strikes among the employees of such contractors and carvers but have simply ordered members of the defendant unions to cease work upon such class of stone.

F. Defendants deny that they are attempting to bring about a condition whereby architects, contractors, owners
54 of buildings, building contractors and cut-stone contractors, who require and are obliged to purchase materials of the kind and character produced by each of the complainants and who would purchase materials from complainants, will be compelled and coerced by strikes and labor troubles, caused by the defendants and by fear and threat thereof by defendants to refrain from purchasing or using materials produced by complainants or any of them, and further deny that said defendants have been already partially successful in so doing; and

Defendants further answering say that said contractors and builders have, during all the period of time, herein complained of, employ men, not members of this union, to perform the work necessary for the installation of complainants' products, which men are not members of said "General Union" and that defendants deny that they in anywise interfered with the employment of such labor by such contractors and builders.

G. Defendants deny that they are endeavoring wilfully to induce, compel and coerce complainants and each of them to violate their contracts and working agreements with the said

Stone-cutters & Carvers Union of Lawrence and Monroe Counties and the Planermen's Union of Lawrence and Monroe Counties and that they have, in effect, announced and threatened that they will continue to interfere with with the business and interstate commerce of the complainants and each of them until such time as they will breach and terminate said agreements and enter into agreements with the defendants.

H. Defendants deny that they have knowingly, and wilfully induced and attempted to induce employes, contractors and carvers under contract to work on the products of the
55 complainants to breach and fail to carry out said contracts; and further answering, said defendants say that they have not picketed the quarries and shops where aforesaid employees, contractors and carvers are working and have in no wise attempted to induce said employees, contractors and carvers to breach contracts.

I. Defendants admit that on or about July 7th, 1924, said General Union issued to all its locals and members a letter containing certain orders and directions which said general order was signed by Joseph Blasey, General Secretary of said General Union, and a copy of which letter is set out in Sub-Division I of Paragraph 18 of plaintiffs' Bill of Complaint.

J. Defendants deny that complainants have outstanding contracts for the sale of stone, which contracts the defendants are placing in jeopardy by reason of the acts set forth in complainants' complaint, and deny that strikes and interferences have taken place within the last few weeks in connection with the fabrication, carving and installation of stone in the States of Colorado, Illinois, New Jersey, Minnesota, Michigan and Indiana because of the activities of the defendants, but admit that the President of said General Union has announced that the rule against handling of that class of stone, herein repeatedly described and produced by complainants is to be promptly enforced in every part of the country without discrimination except as to Shea & Donnelly Company.

19.

Defendants deny that there is any combination and conspiracy upon their part, as alleged in complainants' Bill of Complaint, and deny that on account of the combination
56 and conspiracy, alleged in said Bill of Complaint, and the acts, alleged to have been performed in furtherance

thereof and on account of said alleged inference, with the sale, transportation and use of the products of complainants in interstate commerce among architects, builders, owners, contractors and others who desire to and otherwise would purchase the products of said complainants for use outside the State of Indiana, are prevented, deterred and intimidated from so doing because of the fear that defendants may cause strikes of stone-cutters and other trades to take place in their establishments or on the buildings where said stone is to be used and deny that such architects, builders, owners and contractors have been caused great loss and damage thereby.

Further answering, defendants deny that by reason of the alleged facts and acts contained in Complainants' Bill of Complaint that any of said complainants have had their interstate commerce restrained, prevented, obstructed and interfered with, and deny that said complainants have suffered great and continuing irreparable injury and damages in any amount.

20.

Defendants further deny that complainants have any action at law or in equity by reason of the cessation of work by the defendants, as herein set out, and that said defendants have suffered any damages by reason of the actions of the defendants herein as described in this answer, and deny that said complainants or any of them are or is suffering continuous or irreparable injury and damages by reason of said actions and acts of these defendants.

Defendants further answering say that they have no knowledge as to whether complainants have valuable contracts
57 outstanding whereby each of them has agreed to furnish stone for building purposes or whether complainants have contracts outstanding whereby they have already furnished such stone and for which they have not yet received payment and which has not yet been installed in the building by the purchasers thereof.

Defendants further say that they have no knowledge whether a substantial part of said stone, so sold on contract, has already been delivered but not yet installed, or whether said stone is about to be installed in buildings of conspicuous importance, but deny that if the cessation of the defendant members of said unions to work on said stone becomes widely known, said building operators will be stopped or interfered

with, and deny that the good-will and business of the complainants will be irreparably injured thereby.

Defendants further deny that the enforcement of the general order, hereinbefore referred to, threatens to and delays, interferes with and prevents the performance of contracts by the vendees of complainants.

Defendants further deny that they have done any act or thing which tends to the manifest injury and oppression of complainants.

Wherefore, defendants and each of them, having thus made a full answer to all the matters and things contained in the Bill of Complaint herein, pray that said bill be dismissed and for damages for their costs in this behalf incurred.

RALSTON, GATES, LAIRY, VAN NUYS & BARNARD
Attorneys for defendants.

58 And afterwards to wit at the November Term of said Court on the 24th day of March, 1926, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit: Filed Mar 1926.

Come now the parties by their respective solicitors and file stipulation, which stipulation is as follows:

59 • • • • • •

STIPULATION

It is hereby stipulated that, for the purpose of final submission of the above entitled case for final trial, hearing, and decree, the evidence shall consist of all affidavits and exhibits submitted by the complainants and the defendants on the motion for a preliminary injunction herein and which were thereafter embodied in the printed record on appeal to the United States Circuit Court of Appeals for the Seventh Circuit.

That said affidavits shall be given the same force and effect as if the affiants were called, sworn, and examined in open court, and that said exhibits shall be given the same force

and effect as if the originals were introduced in evidence in open court.

Dated March 23rd, 1926.

CHARLES MARTINDALE
Solicitor for Plaintiffs
FREDERICK VAN NUYS,
Solicitor for Defendants.

75 (Entry for April 30, 1926 continued)

nent of
dence,
Apr. 30,

And said complainant also files narrative statement of evidence, which has been signed and approved by the Court, and is as follows:

76 * * * * * *

NARRATIVE STATEMENT OF THE EVIDENCE.

CHARLES MARTINDALE
Solicitor for Appellants

WALTER GORDON MERRITT
New York City,
Of Counsel

Filed Apr. 30, 1926, William P. Kappes, Clerk.

77 * * * * * *

At the final hearing of this cause, to sustain their contentions the plaintiffs offered and read in evidence a stipulation entered into by the parties and filed in this cause on March 23, 1926, which is as follows:

78 STIPULATION.

It is hereby stipulated that, for the purpose of final submission of the above entitled case for final trial, hearing, and decree, the evidence shall consist of all affidavits and exhibits submitted by the complainants and the defendants on the motion for a preliminary injunction herein and which were thereafter embodied in the printed record on appeal to the United States Circuit Court of Appeals for the Seventh Circuit.

That said affidavits shall be given the same force and effect as if the affiants were called, sworn, and examined in open

court, and that said exhibits shall be given the same force and effect as if the originals were introduced in evidence in open court.

Dated March 23rd, 1926.

and also offered and read in evidence the following affidavits and documents:

79 • • • • • •

FRANCES DODD TOVEY being duly sworn upon her oath deposes and says:

That the Journeymen Stone Cutters' Association of North America, for some years heretofore and particularly during 1923 and 1924 and at the present time, has printed and published or caused to be printed and published, and is now printing and publishing or causing to be printed and published and causing to be issued and circulated to all the branches, subordinate bodies, local unions, officers and members of its Association, a certain monthly publication known as Stone Cutters' Journal. That through this medium it communicates to all of its subordinate branches, local unions, officers and members, notice of all action taken by its official bodies and officers, and particularly the action and policy of its President, Vice-Presidents, and General Executive Board, as well as its local unions, and has communicated to its members the resolutions, orders, directions and actions of its general officers, General Executive Board, and subordinate officers, local unions, in respect to the controversy between the plaintiffs and the defendants set forth in full in the Bill of Complaint filed herein. That among the notices and publications and information communicated to its members, officials, local unions and members, concerning the action and activities of its general officers, it caused to be published the statements in said Stone Cutters' Journal for various months in the years 1923 and 1924 hereto attached and made a part hereof, all of which are true, full and complete copies of the statements contained in such publications.

FRANCES DODD TOVEY

Subscribed and sworn to before me this 15th day of October, 1924.

ELMA C. WALTERS
Notary Public

My commission expires May 9, 1926.

80 The Monthly Reports of the President of the Stone Cutters Association are found in the monthly issues of the Stone Cutters' Journal for various months. Extracts from such reports are as follows:—

—Journal, January, 1923, page 5—

"In starting the New Year, take notice we find at several places men are wanted in yards where we have agreements with the employers of that locality and still find our men working on scab cut stone that comes in from the Belt in these same localities. Now this condition has to stop. Get off these fitting jobs, and go to work in the yards that have agreements with our Association. If they want men to fit the stone that is cut in their mills by scab labor, let them use the same men that cut the stone in their mills, and we will take care of our own employers that use our men in their mills and on their fittings on the building. There has been too much of this work on scab cut stone at the building by men with union cards in their pockets and have been permitting same. • • • We want all members to take notice as there will be some cards revoked if this condition continues. Look in your Constitution, and you will find the law covering this condition, and don't try to evade this issue when we come in and call you to account for your action on this class of work. Look on page 8 of your Constitution, Article 10, Section 2. Your duty to yourself and your organization is plain enough. Every one turns over a new leaf on New Year's. So you do the same. This year resolve to refrain from fitting any scab stone irrespective of where it was cut. This means you."

—Journal, February, 1923, page 5—

"Brothers, we want to again remind all members that we meant what we said when we issued orders to all members to refrain from working on any scab cut stone under the penalty provided in the Constitution. Look on page 8, Article 10, Section 2, and let your conscience be your guide. As I have stated before, your duty to your organization demands this much of you. You have no excuse now to violate this Article of your Constitution. It has been approved by you, for it has been in our Constitution for years. Now, all we ask of you is to respect this Article, and if you don't, you
81 will know what to expect when an investigation of your action is taken up, and the Constitution applied in your case. All hands off scab cut stone."

—Journal, March, 1923, page 5—

"In submitting my report, we are pleased to note that several locals have complied with the request asked of them to refrain from working on unfair cut stone, and they are only living up to their Constitution, which is nothing more than we expect from every local and every individual member of the General Union. It is your duty as union men to live up to laws laid down in your Constitution. This is no new law; it has been in your Constitution from its very conception (?) Members have only gotten careless in this respect, but we believe in a short while all our members will take proper note of this law, and refrain from working on stone cut by men unfair to our organization. We are not asking anything unreasonable of the employers. All we ask them to do is, if they start their work with unfair labor, to finish with the same caliber of men."

The report then continues to tell of conditions in St. Louis where the men refused to handle the material; also of similar conditions in Cleveland; and also difficulties with the P. H. Kelly Construction Company.

—Journal, April, 1923, page 7—

"We have good loyal union men in the Belt, but they are in no position to get their former employers to meet with them to consider drawing up an agreement; so they are depending on their brother union men working on the outside where the unfair cut and semi-finished stone is shipped to; all they ask is for you to refuse to work on this class of work that has been started by men working in opposition to our Association, and if our members will refuse to work on this unfair stone, which is no more than their duty as union men. It is plain, the law is in your Constitution to guide all members. * * * No, it is your plain duty as a member of the union to refuse to work on stone started by men working in opposition to you. * * * It is a law in your Constitution, and you should live up to it. The law itself states very plain the penalty for any member violating this law. So refuse to work on stone started by men working in opposition to you."

82 —Journal, December, 1923, page 4—

Refers to incident in St. Louis where special permission was given to handle non-union material in a particular case.

In the supplement to the Stone Cutters Journal for December, 1923, appears a report of President Mitchell of the Journeymen Stone Cutters Association made at the 15th Annual Convention of that Union held in Cleveland in October, 1923. That excerpts from that report are as follows:

"In the January Journal of 1923, the following notice was sent out to all members of the G. U.: 'In starting the New Year, take notice we find at several places men are wanted in yards where we have agreements with the employers of that locality and still find our men working on scab cut stone that comes in from the Belt in these same localities. Now this condition has to stop.' Then the article in our Constitution was referred to also. 'Look on Page Eight of our Constitution, Article X, Section 2. Your duty to yourself and your organization is plain enough.'

Having it so well fixed in our minds that our members were all fully informed as to the injunction, and that we could not in any way interfere with the work of Shea & Donnelly, it was not considered necessary to mention in the order of 'all hands off' that Shea & Donnelly was not included. A copy of the injunction was sent to every Local; also a letter instructing all members to respect the injunction and do nothing that could even be construed as a violation of it; and as nothing further was sent out in reference to our relations with this firm, it was understood that the original instructions in regard to Shea & Donnelly still held good."

"In the February Journal, 1923, I again called the membership's attention to men working on scab cut stone, and referred to the article in our Constitution."

"We received complaint that men were cutting scab stone at Cleveland, Ohio. On investigation it was explained that there was a local agreement covering same. Business agent agreed to produce agreement at regular meeting of the Local."

"In March Journal we again called attention to men working on scab stone, and tried to make it as plain as possible so no one could say he had not seen the order, or did not understand it.

We went through the Indiana Belt district, Bedford, Bloomington, and Ellettsville, speaking at their meetings, and
83 assuring them that their Brothers in the outside Locals were now going to support them by refusing to work on any scab cut stone coming from the Belt. It encouraged them.

Philadelphia did not seem to understand the order just

right, and I had a joint special meeting called of our three Locals, the cutters' Local, the carvers' Local, and machinemen's Local, and I went there and addressed our member in joint session on the conditions in the Indiana Belt, and the result of our men working on scab stone. They agreed to abide by the order to refuse to work on scab stone.

I went to New York City, and went to see a few carving contractors, myself, and E. B. Member Wall; and I told them in person that they could not start carving jobs where the stonecutting and planing was done by men working in opposition to our association. One of them had a large job of carving at the time; but the job would not be ready for carvers for six months then."

"Again in the April Journal, you will note I warned the membership against working on scab cut stone; for four Journals, so no one would have any excuse."

"On leaving Philadelphia, I stopped at Baltimore to make plain the organization's stand on men working on scab cut stone to both the employers and the men."

"I went to Louisville, Ky., where a special meeting was called; and I addressed our members on general conditions, and the stand taken by our association on scab cut stone."

"We also had a conference arranged for that same Sunday afternoon, at the hotel, with Mr. Kelly, general contractor on the library job, the job that has been tied up for want of carvers for some time. President Philip Aliano, of the carvers, and President Tom McShea, of the cutters, were present with me at this conference. Mr. Kelly explained his position on this job from the start of the job, and asked for G. U. carvers, making the flat statement that the job would be done by G. U. carvers sooner or later, and why not now? We were in no position to give him any relief, and so informed him."

The official report of the said Convention of the said Union held in Cleveland, on page 16 also contains the following:

"President Mitchell discussed at some length the situation in the Indiana Belt District. He stated the organization would have to act as a unit in its policy with regard to this district, a policy which when followed would affect all alike.

He took up the question of the small employer, the em-
84 ployers who have always been favorable to General Union men, and their difficulty in competing with the larger plants; the desire of the small employer to be fair, and still remain in business." • • •

"In referring to the Indiana situation he (President Mitch-

ell) stated: You will either have to straighten them out or you will have to put up your fight, and you will have to put up your fight so it will bear all the way around, and not here and there."

It also appears on page 24 of the official report of said Convention proceedings of October, 1923, that a resolution was passed as follows:

"No. 5

Whereas, The firm of Shea & Donnelly, of the Cut Stone Contractors' and Quarrymen's Association, has applied for and secured an injunction against our General Organization, therefore, be it

Resolved. That we recommend that no agreement be entered into between our organization and the Cut Stone Contractors' Association unless this injunction is dissolved; and in the event of no agreement, that our G. U. Officers and Members of the E. B. consider the advisability of taking steps to dissolve the said injunction through the courts.

ERNEST EDELER,
Delegate District No. 14."

The official report of said Convention proceedings of October, 1923, (pges. 61-66) also shows that the Constitution of said National Union as amended and adopted contained the following:

"Article X.

Sec. 2. No member of this Association shall cut, carve, or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended."

"Special Article IV.

This organization guarantees full protection to its officers in case of any litigation that may be brought about through any action in the performance of their duties as officers of this Association."

The said Journal of said Stone Cutters Union for May,
85 1924, contains a report of President Mitchell which reads in part as follows:

"The natural stone industry needs all the natural advantages it can possibly get, as there are so many kinds of sub-

stitutes to take the natural stone's place in the building material market, that it behooves the natural stone employers to do their utmost to see that no handicap is in its way, and it is a well known fact that when any material is known to have labor grievances, it retards that material in the building market, as the building public do not want the stigma on their building that it was built by 'unfair labor', and they are also afraid of stoppage of work and unnecessary disputes while their building is in course of construction, and no one can blame them for that."

The Journal of the Stone Cutters for July, 1924, contains a report of President Mitchell which reads in part as follows:

"So take notice, brothers, when an order goes out from your own international union, live up to it to a letter; for the order will be for the best interest of your own international, and you have as much right to respect an order from your international as the employers have to respect an order from their international, and don't be a bit backward in telling your employer that an order from your international is law with you at all times. We just want to call this to your mind at this time, for you may receive an order in the very near future and your international will expect you to live up to that order to a letter; and don't forget your duty to your international when that order is sent out."

That the Stone Cutters Journal for August, 1924, contains a monthly report from William M. Mitchell, General President of the International Journeymen Stone Cutters Association which, among other things, refers to the action taken by said International Association at its convention in Cleveland in October 1923 forbidding its members to handle or work upon stone quarried or fabricated by any of the complainants, and the action of the Executive Board of said International Association, on June 27th, provided for the enforcement of said rule;

That the part of said report of said Mitchell which covers said matter is as follows:

"As you will remember that our last convention instructed the incoming officers to try and negotiate an International Agreement with the International Cut Stone Contractors' and Quarrymen's Association, and then if every effort failed
86 to get a joint meeting the two Executive Boards, your association's Board was to be called into session to take up the mandate handed down by the delegates to your last convention, held in Cleveland, Ohio, last October. Your officers

have carried out the wishes of that Convention, and did do everything within their power to try and get a joint meeting between the two International Boards, representing the two associations, but to no avail. So the order was sent out by your Executive Board to convene at headquarters at nine o'clock Friday morning, June 27, 1924, to take up the mandate handed down at Cleveland, by your delegates, so your entire Executive Board was present at headquarters on the above mentioned date, and after going into the entire situation and viewing it from all angles, they issued the order sent out to our members, and it is up to you to live up to the Board's order to a letter, for it means just what it says, and nothing else; don't try to plead ignorance after August 1, 1924, if you have not got a constitution of our association, get one, and if you have one, look on page 9, Article 10, Section 2, and there you will see just what the Board's order means to the members of our association, who the order is meant for, and no one else. So live up to the Board's order, boys, and you will have nothing to regret later. Just stop and think all the order means is that if we are not good enough to start the stone, we sure are not good enough to finish it. If the men working in opposition to us start the stone, let them finish it. That is fair enough for anyone. They won't let you work in their shops with your card, so don't work on this class of stone on the outside, or you will lose that card, just as soon as you are found violating the Board's order, so it is up to you to stand by the order, and tell any employers that ask you to work on this stone that was started by men working in opposition to your association that you have as much respect for your association's order, as they have for their association. The employer don't violate an order issued by his international association then why should you violate an order issued from your international association. We want you to study the order as it is issued to you, and you will see that it is fair, all that is asked of you is to see that our union men start the work and finish it, and if the fellow working in opposition to you starts the work, let him finish it. There is nothing unfair about an order of that kind, is there? Surely not. Some employers say they would rather go out of business than violate an order from their international association; that's what you call good association men. Well,
87 it is much easier for a mechanic to quit his trade, and work at something else than it is for an employer to quit business."

The Journeymen Stone Cutters Journal for September, 1924, contains a report of President Mitchell from which the following are extracts:

"Since submitting last report we were in the Indiana field and find conditions there just as they have been for some time, the members in that district are looking forward to the general order issued last month to all members requesting them that on and after August 1, 1924, to refrain from working, dressing, altering, finishing, carving or fitting on the building site, any work that has been started, planed, turned, cut or semi-finished by men working in opposition to our organization. The general observance of this order is not known and a detailed report is not possible on this question. What is wanted now is unity with all members observing the laws of your organization. Your union is just what you make it; so it is up to you to be a booster for your organization at all times, and not a knocker. If you have a just complaint to make there is a time and place to register same, where you will get results. You are now asked to stand squarely behind your Constitution. The laws in your Constitution are your own laws, and you have a perfect right to observe them, for you subscribed to them when you became a member of the organization. You understand why the general order was issued by the Executive Board of your association; your own convention served a mandate on your executive officers at Cleveland, Ohio, last October, when it instructed your officers to do all within their power to get a joint meeting between your Executive Board and the Executive Officers of the employers, which was done, but to no avail. The delegates were very positive in their stand that if there was no international agreement drawn up, the laws in the Constitution must be enforced and lived up to. It is up to you, as members, to strictly adhere to the law as enacted by your own representatives at your convention. You are not taking any undue advantage of anyone; all men in the Stone business knew that you would take this action sooner or later, and some of them looked for it sooner than it came. The employer that orders material for a job that he has a contract for knows under what condition that material was fabricated. They are better posted than a lot of your own men seem to be on the labor situation within your own organization. So it is up to all our members to live up to the law in our Constitution, Article 20, Section 2."

"Your convention at Cleveland, Ohio, last October, eliminated laws in your Constitution to make a settlement pos-

sible, but a certain element in the employers' association don't want peace, and when it comes to a point where men cannot get anything to which they are entitled, there is a limit to patience and endurance, and that is the reason that the general order was sent out refusing to assist the enemy any further by finishing his work for him; let him finish it himself. There has to be a stand taken and now is just as good a time to take it as later, and bear in mind, that we still stand ready and willing to meet the employers, at any time. We are interested in the stone industry, and we want it to prosper, even if this element don't, we do. We further want to call to the notice of all our members that the employers are spreading propaganda through their stone agents telling all that they come in contact with, that our men are working on stone started by men working in opposition to us all over the country, which is not true. We are ready and willing to stop any of our members that are found violating the general order from the Executive Board. Brothers, we ask you not to take everything you hear for granted, coming from that source. Those men are paid to spread all the discontent they can; their jobs depend on that, so when you hear this kind of news, just take it with a grain of salt, and make up your mind to observe the law in your own Constitution to a letter. Your delegates to your last Convention, held in Cleveland, Ohio, last October, know how hard they worked to revise laws, so that they would conform with a possible international agreement, the suggestions made by the employers to bring about the meeting that was virtually promised us if those laws would be eliminated at the Convention, and now to think that their efforts were treated with contempt by a certain element in the employers' association, that don't want peace in the stone industry. That same element blocked all efforts for a joint Board meeting, between the two associations, and they are the same men that are employing the men that are working in opposition to you, and doing everything they can to disrupt your organization, so why should you finish work for those kind of men, and help them to continue their fight against you? If you could see some of their shops with fifteen or twenty apprentices trying to cut stone, with "instructors" showing and putting on
99 the lines for the boys, you would not be so anxious to work on the stone started by this class of employers, you would let them finish their own work. Those same employers that are using this kind of labor are also doing all they

can to discourage all hand cutting and carving that they can for the reason that they have not got the mechanics to do the work required; so it is purely up to you to not finish their work for them, if you are not good enough to start it for them, you surely are not good enough to finish it. You don't need any further orders to tell you your duty to your organization; just live up to the laws in your Constitution and all is well.

(Signed) M. W. MITCHELL,
General President."

State of New Jersey } ss.:
County of Atlantic }

CHARLES T. PENN, being duly sworn, deposes:

I reside in Washington, D. C., and am the selling Agent of the Indiana Quarries Company for the East, exclusive of the Metropolitan District of New York. My office is at 626 Colorado Building, Washington.

During the past four years I have sold limestone, the product of the Indiana Quarries Company, to Ralph Balestrieri, of Atlantic City, in an aggregate amount of about $60,000. This stone I have sold unfinished and he and his workmen have placed it in the wall of buildings and finished it in the design or style required by the general contract under which he was employed. He employs about six stonecutters and three general laborers as assistants to the stone cutters.

About a year ago he submitted to me plans for the Ocean City Title & Trust Co. building at Ocean City, N. J., and asked me to get from the Indiana Quarries Company a price at which that company would sell wholesale to him the limestone required on the job. The limestone contract amounted to about $20,000. After receiving a price from the Indiana Quarries Company I transmitted it to Balestrieri, who agreed to take the limestone at that price. This was the way in which practically all of our business has been done. There have been no written contracts between us.

Work upon the building commenced shortly thereafter, and the limestone was shipped and delivered to Balestrieri as he required it.

About September 2nd, 1924, I was in Atlantic City and was sitting on the piazza at Balestrieri's home, 307 N. Connecticut Ave., at about seven o'clock in the evening, when a stonecutter in his employ, named Richelo, known

to Balestrieri by the nickname of "Chick", came up on the piazza and said to Balestrieri that he wished to talk to him. Balestrieri told him to go ahead and talk. He then showed us a typewritten letter from the International Journeymen Stonecutters Union of North America which notified its members that they were ordered to refrain from doing work of any kind upon limestone put out by the Indiana Quarries Company, among others, for the reason that such limestone was partially fabricated by non-Union labor. Balestrieri protested that he had nothing to do with the labor employed by the Indiana Quarries Company and had no control over its policy as to the men whom it should employ, that if he could not get his work done upon the limestone which he was to install in the Ocean City Title & Trust Co. building he would be in default under his contract, that it was a serious matter to him, and that he did not think he deserved such treatment from his workmen. Richelo replied that he was sorry but that his orders were definite and he would have to obey them, that he believed the men could work through that week, but that they would have to quit on Friday night. The men did not work on Saturday.

Balestrieri's contract with the Ocean City Title & Trust Company was about two-thirds completed at the time of the above episode.

I talked to Balestrieri today, September 15th, 1924, at the corner of Pacific & New Jersey Aves., Atlantic City, where he is doing another limestone job on an apartment house. Charles F. Bailey, of the law firm of Gleason, McLanahan, Merritt & Ingraham, New York City, was also present. Balestrieri gave us the following facts:—

On the Monday following his conversation with Richelo, at which I was present and which I have already related, James Matthews, a stone cutter who had been employed by him for sometime, did not appear, but that to his surprise, Richelo did appear and went to work. That Balestrieri did not ask Richelo why he had changed his mind but waited for Richelo to explain to him. That a few days following a man by the name of McCullough, from Philadelphia, called upon Balestrieri and stated that he was the official delegate of the International Journeymen Stonecutters Union of North America for the district including Atlantic City. That Richelo's conversation with Balestrieri, at which I was present, had been reported to him, McCullough, and that the Union had decided

that no stone cutters need quit on contracts which Bales-
91 trieri had at the time of the Union order, but that as soon as those contracts were completed all stone cutters would be instructed to quit on whatever jobs Balestrieri had for the installation of limestone of the Indiana Quarries Company, and that they would not be allowed to work on the limestone taken by Ballestrieri under any new contracts with Indiana Quarries Company.

Balestrieri further stated that he would be glad to make an affidavit embodying the facts he had given us, except for the circumstances that he still had two jobs to complete which the Union would allow him to complete without calling off the stone cutters, and that if he should make such an affidavit and the Union should learn of it before those jobs were completed, he would probably be in trouble with the Union. He said that he would be glad to make such an affidavit as soon as the jobs were finished.

CHAS. T. PENN.

Sworn to and subscribed to before me this 15th day of September, 1924.

ELIZABETH C. GORMLEY
(Seal) *Notary Public*
My commission expires August First 1929

State of New Jersey, } ss.
County of Atlantic, }

CHARLES T. PENN, being duly sworn, deposes:

I am the sales agent for the Indiana Quarries Company for the Eastern part of the United States with the exception of the metropolitan district about New York. I reside in Washington, D. C., and my offices are at 626 Colorado Building.

In addition to the trouble which Mr. Ralph Balestrieri, of Atlantic City, has had with his stonecutters, which I have described in another affidavit made by me today, still another contractor who buys from me the limestone of the Indiana Quarries Company, Mr. P. McHolland of Harrisburg, Pa., has had recently a similar experience. He told me that stonecutters employed by him, members of International Journeymens Stonecutters' Union of North America, came to him and notified him that they could not work on any limestone

purchased from Indiana Quarries Co. He was about to buy limestone through me from Indiana Quarries Co. for the Chamber of Commerce Building, Harrisburg. McHolland asked me if I could not arrange with the Indiana Quarries Company to have the limestone completely fabricated
92 and cut for installation on his jobs without any further cutting at the building site so that he would not have to deal with the uncertainty of securing competent stone cutters to do that work on the job. I took it up with the Indiana Quarries Company, and at my request Mr. McHolland went out to Indiana to see if he could arrange that with them. He is now out there.

CHAS. T. PENN.

Sworn to and subscribed to before me this 15th day of September, 1924.

ELIZABETH C. GORMLEY
Notary Public

(Seal)
My commission expires August First 1929

State of Indiana } ss.
County of Lawrence }

At the city of Bedford, in the County of Lawrence, in the State of Indiana, this 26th day of September, 1924, personally appeared R. M. RICHTER, who being by me first duly sworn, deposes as follows:

My name is R. M. Richter, age 47, residence, Bedford, Indiana. I am Secretary and a member of the Board of Directors of The Furst-Kerber Cut Stone Company, an Indiana corporation having its principal office and place of business at the City of Bedford, in the State of Indiana, and which said corporation also has an office at the City of Chicago in the State of Illinois.

Said The Furst-Kerber Cut Stone Company is and for many years last past has been engaged in the business of quarrying, sawing, planing, cutting, carving, and otherwise fabricating Indiana Limestone, which said stone in its various forms is sold by said Company to owners, general contractors and other cut stone contractors in practically all parts of the United States and in various places in the Dominion of Canada.

While not connected with The Furst-Kerber Cut Stone Company all the time, I have been connected with the Indiana

Limestone industry and in close touch therewith since 1912. Said The Furst-Kerber Cut Stone Company is one of several companies engaged in the business of quarrying and fabricating Indiana Limestone in what is known as the Indiana Limestone District which is nearly all situated in Lawrence and Monroe Counties in the State of Indiana. Said
93 Limestone is generally quarried and carried through the various processes of fabrication, marketed and sold by the various firms engaged therein in said District in substantially the following manner:

After the overburden, consisting of dirt or stone broken up so as to be unfit for building purposes, has been removed, there remains a stratum or ledge of stone suitable for structural purposes, varying in depth from forty feet to sixty feet. This is excavated into socalled cuts, which are drilled into rectangular blocks, averaging ten tons each. A large proportion of the output is shipped in the form of such blocks, commonly termed rough blocks. Quantities of blocks are likewise shipped which have undergone the socalled scabbling process, which means the removal of uneven, rough surfaces, primarily for the purpose of reducing freight charges where shipment of such socalled scabbled blocks is made to points at considerable distances from the quarry.

Another substantial portion of the output is shipped in the socalled rough sawed state or slabs. That is, the rough blocks are sawed in varying thicknesses according to customers' orders to be further fabricated at points of destination by the purchasers. A proportion of such slabe is also resawed, or sawed a second time, for such customers as the cut stone contractors, the second sawing reducing the about of work after receipt at destination.

A considerable volume of material is shipped in the socalled machine dressed state. That is, it is furnished on basis of socalled planer schedules, which are prepared to cover the requirements of a specific contract for cut stone, but such planer schedules contemplate the fabrication of the stone only up to and including the point where the work can be done by machinery, leaving more or less socalled hand-cutting to be done by the employes of the cut stone contractor away from the source of material, who has bought such requirements in the socalled machine dressed state. Such machine dressing commonly involves planing, turning, or diamond sawing, and may require all of these operations; in

any event, leaving the strictly hand-cutting to be done by others in other cities.

It has been my observation that from two-thirds to three-fourths of the entire District output goes to the cut stone trade away from the socalled Indiana Limestone District in either the form of rough or scabbled blocks, sawed or re-sawed stone, or in the machine dressed state. This, the bulk of the Indiana Limestone used in building operations
94 throughout the United States and Canada, is dependent upon stone cutters away from the socalled Indiana Limestone District for its preparation for final erection in the building.

It is further my observation that from one-fourth to one-third of the output of the Indiana Limestone District is shipped thence in the completely finished state; that is, ready for erection in buildings in the United States and Canada. These finishing, or cut stone operations, require the services of expert estimators, draftsmen and shop forces in that an architect's plans and specifications, as a rule, are totally inadequate for the direct production of the cut stone required. Such architect's plans and specifications are unse simply as the basis for the development of definite socalled working drawings or shop drawings, which must be prepared, properly dimensioning and identifying every single piece of stone required in a given contract, which, in cases, involves such dimensioning and identification of thousands of pieces of stone in a single contract. Upon completion of such shop drawings, patterns, templates and tickets are made for each individual piece of stone or for all pieces of a like size and character. Such patterns, templates and tickets are issued to the mills, where they are used in all of the various steps of fabrication, each piece of stone being lettered or figured with a mark of identification having direct reference to a similar mark or letter on the shop drawings.

Upon receipt at destination of the material so finished and prepared, the receiving contractor prepares to erect the stone work by direct reference to the shop drawings. It is a common occurrence that controlling general dimensions originally given are varied in the actual process of the erection of a given structure, and concrete columns, beams or floors may be thicker than originally intended, steel may be heavier or may project beyond the lines and points originally set up, and changes of many kinds may be made for expediency's sake. There enters likewise the liability of errors

being committed in the fabrication of cut stone work at the source, all of which elements, together with the more or less frequent incident of damage in transit and transportation, quite usually require the services of a fitter at the building site, so that this finished cut stone work may be made properly to enter into place in the building, regardless of changes, errors, etc. as may have developed in the entire process of construction on any given operation.

Such fitting, trimming, dressing, etc. at the building site or at the city of destination has for many years been done by stone cutters, they being by reason of their training and experience, best qualified, as a rule, to undertake such work. In instances where no local stone cutters are available, it has been the custom of cut stone firms operating in the Indiana Limestone District to send at least one of their own stone cutters to take care of such fitting operations, and it has also been the custom in the trade that where an unusually large operation required several fitters, one stone cutter would be sent by the shipper of the cut stone, who, in turn, would employ local stone cutters to assist.

In the many public, private and commercial structures of all sizes, and some of them of outstandingly large importance which The Furst-Kerber Cut Stone Company has furnished throughout the United States and Canada in its many years of active business, such general procedure as to fitting, dressing, trimming, etc. has invariably been employed, except that latterly, that is to say within the last year, increasing difficulty has been encountered in securing stone cutters for this purpose locally or at points of destination. Especially has such been the case in the erection in 1923 of the Federal Land Bank at Baltimore, Maryland, and more recently, that is, in 1924, in the erection of the Administration Building of the University of Minnesota at Minneapolis, Minnesota; in the erection in 1923 of The First National Bank of Braddock, Pennsylvania; in the erection in 1923 of the Homewood Cemetery Chapel at Pittsburgh, Pennsylvania; and within the last ninety days past, it has not been possible to secure stone cutters to do the fitting, dressing, trimming, etc. in the erection of the Federal Reserve Bank at St. Louis, Missouri.

Indiana Limestone has been for almost a half century recognized as the one universal building stone of extraordinary suitability for buildings of every description, especially large and fine buildings, and it has been employed in such well known structures as the Grand Central Terminal Station,

New York City; Cunard Building, New York City; Federal Reserve Bank Buildings at Boston, Mass., New York City, Richmond, Virginia, Minneapolis, Minnesota, Saint Louis, Missouri, Kansas City, Missouri, Chicago, Illinois and Dallas, Texas; the interior of the City Hall at San Francisco, California; the County Court House at Portland, Oregon; War Risk Insurance Building, Washington, D. C.; Department of the Interior Building, Washington, D. C.; Bureau of Printing and Engraving, Washington, D. C. and innumerable others.

96 At the present time the industry is in an exceptionally active state, a very large number of contracts of all kinds and sizes being under way, many of them being furnished in the socalled cut ready to set state by the firms in the Indiana Limestone District who furnish work of that description. The number of stone cutters and carvers at present at work in the Indiana Limestone District is about equal to the greatest number which has ever been employed there. If, however, through stress of circumstances it becomes necessary for the cut stone shippers in the Indiana Limestone District to send their own men to the multitudinous points of destination where their work is being erected and requires fitting, dressing, trimming, etc., it will so deplete the working forces in the Indiana Limestone District as to make it impossible for the firms there to continue their operations on anything approximating the present volume of activity, nor would they be able to furnish even a fractional part of that demand which exists for the material.

It is already well known that stone cutters elsewhere are refusing to work with fitters sent out by firms in the Indiana Limestone District. This because such fitters or stone cutters sent out by such firms belong to the Indiana Limestone Unions, that is, not affiliated with the American Federation of Labor, but chartered under the laws of the State of Indiana, and the several firms operating in the Indiana Limestone District have collective working agreements signed by said employers and these Indiana Unions as above described and which agreements expire in part in 1925 and in part 1926.

The Indiana Unions above referred to are respectively, the Stone Cutters and Carvers Union of Lawrence and Monroe Counties, Indiana and the Planermen's Union of Lawrence and Monroe Counties, Indiana, same operating under the aforesaid working agreements since approximately the middle of 1921 without interruption by reason of strikes or lockouts

and during all that period of existence at the highest scale of wages ever prevailing in the Indiana Limestone District.

All of the firms operating in the Indiana Limestone District as either quarriers or cut stone contractors, or both, employ members of the Independent Indiana Unions hereinbefore referred to except the Ingalls Stone Company and Brooks Cut Stone Company, Bedford, Indiana and Bowman & King Stone Company, Alexander King Stone Company of Bloomington, Indiana; Harding & Cogswell of Elletsville, Indiana, there remaining 27 firms of quarriers and cut
97 stone contractors who employ such independent unions, such 27 firms representing well above eighty percent of the entire quarry and cut stone capacity of the Indiana Limestone District and more than ninety percent of the quarry or rough stone capacity.

And further affiant saith not.

R. M. RICHTER

Subscribed and sworn to before me this 29th day of September, 1924.

EMMA C. WALTERS
Notary Public.

(Seal)

My commission expires May 9, 1926.

State of Indiana }
Lawrence County } ss.

A. E. DICKINSON being duly sworn upon his oath says that he is President of The Consolidated Stone Company, a corporation organized under the laws of the State of Indiana, with its principal office and place of business at the City of Bedford, in Lawrence County, in said State; that he is also General Manager of said Company, and that he has been both President and General Manager of said Company for thirteen years last past; that said Company is and has been during the past thirteen years engaged in the business of quarrying and selling Indiana Limestone blocks and sawed and planed stone, to the general trade throughout the United States and in various parts of the Dominion of Canada; that said Company has also, during all of said time been engaged in the business of cutting, carving and fabricating Indiana Limestone ready to be installed in the buildings in which the same was to be used and selling the same to owners and general contractors for use in various kinds of buildings through-

out the United States and in various parts of the Dominión of Canada.

Affiant further says that on the 17th day of November, 1922, said The Consolidated Stone Company entered into a certain contract with George A. Fuller Company, a general contractor engaged in the erection and construction of buildings in various parts of the United States and having its principal office and place of business in the City of New York, with branch offices in the City of Chicago and various other cities in the United States, which contract provided for the furnishing by said The Consolidated Stone Company to said George A. Fuller Company of the Indiana Limestone cut and
98 carved ready to set in the wall, f. o. b. cars at Bedford, Indiana, with freight allowed to Chicago, Illinois, for the erection and construction of the building known as the "Head House" of the Union Station Building at Chicago, Illinois; that the contract price for so furnishing said stone was $408,000.00; that said contract for the cutting and carving of said stone at the City of Bedford in the State of Indiana, but that, owing to the delay in receiving the models for the carving to be done on said building said stone had to be shipped to the City of Chicago before the same was carved, and with the intention of having the same carved at the City of Chicago.

Affiant further says that one Herbert Bourne of 1211 High Street, Ft. Wayne, Indiana, was a carving contractor from whom this affiant's said company had previously received a bid for certain carving to be done on a building at East Chicago, Indiana, and that this affiant's said Company requested said Herbert Bourne to figure and submit a bid for the carving to be done at said City of Chicago on the said stone so shipped for said "Head House" of said Union Station Building and that in reply to such request so made said Herbert Bourne declined to submit a bid and declined to figure said carving and gave as his reasons for so doing that the Journeymen's Stone Cutters Association of North America had served notice that on and after August 1, 1924, the members of said union would refuse to work on any stone furnished by certain producers of stone in the Indiana Limestone District of which this affiant's Company was one; that on or about August 25, 1924, Mr. George W. Houlsby, a representative of this affiant's said Company at Chicago, Illinois, received through the United States Mails a letter dated August 23, 1924, written in reply to the request so made of said Bourne

for submitting such bid on the carving, a copy of which said letter is hereto attached and marked Exhibit "A"; that said Houlsby was an employe of said The Consolidated Stone Company at the time of asking for said bid from the said Bourne and at the time of receiving said letter; that said letter bore the signature of Herbert Bourne and was written on stationery bearing the letter-head of said Herbert Bourne of Ft. Wayne, Indiana; that this affiant read the original letter so received and that the attached copy, which is marked Exhibit "A" is a true and correct copy of said original letter.

Affiant further says that said carving on said "Head House", which consists of certain sculptured panels has
99 never yet been done and all the stone work on said building, except some replacements rendered necessary by the settlement of the building has been done aside from said carving.

Affiant further says that on May 3, 1924, this affiant's said company entered into a contract with the Midland Engineering and Construction Company of Chicago, Illinois, for the furnishing of the Indiana Limestone cut and carved ready to set in the wall of the Indiana Limestone to be used in the erection and construction of the East Chicago Junior High School Building, which was otherwise known as the Todd Park High School Building, at and for the price of $8,681.00; that said stone was intended, by said contract, to be cut and carved at the plant of this affiant's said company at Bedford, Indiana, but that, owing to the delay of the architect in furnishing the models for the carving, said stone had to be shipped to said building before the carving was done, thus rendering the carving thereon necessary to be done at said building and after the stone was set in place; that this affiant's said Company by and through its said representative, George W. Houlsby of Chicago, Illinois, requested said Herbert Bourne of Ft. Wayne, Indiana, to submit a bid for the carving on said building, to be done at the building, and that on August 7, 1924, said Bourne submitted a bid of $590.00 with the stipulation therein contained that the scaffolding, models and full size details were to be furnished by this affiant's said Company; that said proposal was by letter, and that on August 12th, by letter of that date this affiant's said Company accepted said proposal of the said Bourne for said carving; that thereafter, on or about August 20, 1924, affiant's said company by and through its representative, T. A. Bar-

ton, received a letter by United States Mail, signed by said Herbert Bourne, bearing date August 19, 1924, addressed to Mr. H. Barton, at Bedford, Indiana, a copy of which said letter is attached hereto, and marked Exhibit "B"; that said T. A. Barton's initial in said letter was incorrectly written, but that said letter was intended for and was received by said T. A. Barton who was manager of the Cut Stone Department of this affiant's said Company; that this affiant has read the original letter and that the attached copy, so marked Exhibit "B" is a true and correct copy of said original letter.

Affiant further says that in said "Head House" of the Union Station Building at Chicago, hereinbefore referred to, there developed some cracked stone which had been set in the wall and which cracking was probably due to the set-
100 tlement of the building after the stone was so set; that owing to differences of opinion as to the cause of the stone cracking it was agreed between this affiant's said company, the George A. Fuller Company, which had the General Contract and one George Alexander who had the contract for setting the stone from the George A. Fuller Company, that said cracked stone should be taken out and replaced and that the cost of so doing should be borne by the three; that in pursuance to said agreement that said George Alexander on or about the 23rd day of August, 1924, saw one John F. Kelly who had previously been employed, from October 29, 1923 to April 5, 1924, by this affiant's said Company in fitting the stone in said building, and requested the said Kelly to cut said cracked stone out of said building in order that replacement thereof might be made by said Alexander; that said Kelly refused to work on said stone and stated to said Alexander in substance, that the "General Union," thereby meaning the Journeymen's Stone Cutters Association of North America, had given orders that their members should not work on any stone furnished by companies which employed men not belonging to their union in the production of stone, stating that this affiant's said Company was one of such companies and that he, personally, would be willing to do the work but that he would probably be fined and expelled from the union if he did any work on this job, and that said Kelly refused to do or perform any work thereon thereafter.

Affiant further says that said George A. Fuller Company has been for many years a valued customer of this affiant's said Company, and has purchased stone from his said Com-

pany for its various building operations amounting to probably two millions of dollars, and that in addition to the stone so purchased from this affiant's said Company, they have purchased great quantities of stone from other Indiana Limestone producers in the Indiana Limestone District, including Shea & Donnelly Company, The Fleet-Kerlin Cut Stone Company, Matthews Bros. Company and John A. Bowe Cut Stone Company.

Affiant further says that as a result of the refusal of the carvers to do the carving on said "Head House" of the Union Station Building in Chicago, Illinois, and the Todd Park High School Building, the completion of said buildings has been and is being delayed and the owners of said buildings are withholding large amounts of money from the General Contractors who in turn are withholding large amounts of [illegible] money on the contract price from this affiant's said company.

And further affiant saith not.

A. E. Dickinson

Subscribed and sworn to before me this 17th day of September, 1924.

Elmer C. Watson
Notary Public.

(Seal)

My commission expires May 9, 1926.

EXHIBIT "A."

(Copy)

Herbert Bourne
1231 High Street,
Fort Wayne, Ind.

August 25, 1924.

Mr. George W. Hunkin,
Chicago, Illinois.

Dear Sir:

Your favor of the 22nd inst. received. As sorry at the present time I cannot give you a figure on your work. I was notified by the Stone Cutters Union, that on and after August 1st no cutting or carving would be allowed to be done on any building where the planed stone was furnished by an outside firm. I did not know this at the time you wrote me to figure your school in East Chicago.

I received a letter from your Mr. Barton accepting my figure for the Todd Park School but after receiving this notification from the Union I was forced to write in declining the job as I have about $3000 worth of carving in Union shops that I would have had to throw up if I had done your job.

You will understand the situation.

Thanking you for writing me.

Yours truly,

Herbert Bourne

902 EXHIBIT "B."

(Copy)

Herbert Bourne
Architectural
Stone Carver and Modeler
1211 High Street
Fort Wayne, Ind.

August 19, 1924

Mr. H. Barton,
Bedford, Indiana.

Dear Sir:

I have been notified by Stone Cutter's Union, that after August 1st no member affiliated with their body is allowed to cut or carve stone furnished by an unfair firm. I have recently received this communication since figuring your job "Todd Park High School, East Chicago". As I have about $3000 worth of work in hand for "Union Firms", I shall be forced to decline your job, it would be a case of me having to throw up their work, if I did yours, as you will understand the situation. Some future time, under better conditions I shall be pleased to figure with you.

Yours truly,

(signed) Herbert Bourne

State of Illinois } ss.
County of Cook }

GEORGE W. HOTLSEY, being first duly sworn, on oath deposes and says that he is a "representative" of The Consolidated Stone Company, and that he is in charge of sales

at the Chicago office of the said Company; that The Consolidated Stone Company is a corporation incorporated under the Laws of the State of Indiana; that on or about November 17, 1922, The Consolidated Stone Company entered into a contract to furnish certain carved stone for the "Head House" of the Union Station, being in the process of construction at Chicago, Illinois; that in pursuance of said contract, The Consolidated Stone Company prepared to furnish planed stone cutters for the purpose of determining the figure at which it could let a sub-contract for carving said planed stone on the said "Head House".

That the said deponent, on behalf of The Consolidated 163 Stone Company in a letter dated August 22, 1924, a copy of which letter is attached hereto marked "Exhibit A" and now by reference made a part hereof as fully to all intents and purposes as though here set out in full, requested one Herbert Bourne of Fort Wayne, Indiana, to submit a bid on the said sub-contract, but that the said Herbert Bourne wrote to the deponent as the Chicago representative of the said The Consolidated Stone Company, a letter, a copy of which letter under date of August 23, 1924 is attached hereto marked "Exhibit B" and now by reference made a part hereof, as fully to all intents and purposes as though here set out in full, in which letter he declined to submit a bid on the ground that the Journeymen's Stone Cutters' Union had issued an order that on and after August 1, 1924 no cutting or carving would be allowed to be done on any building where the planed stone was furnished by an "unfair" firm; that the said The Consolidated Stone Company is what is known as an "unfair" firm, on account of the fact that it does not employ solely union labor.

Deponent further sayeth that on behalf of The Consolidated Stone Company he also requested one William H. Wilson, a stone carving contractor, in the City of Chicago, to submit an estimate for doing the said work of stone carving on the said "Head House", but that the said William H. Wilson informed the deponent that he would not be able to submit an estimate for doing the said work because the Journeymen's Stone Cutters' Union had issued an order that on and after August 1st, 1924 no cutting or carving would be allowed to be done on any building where the planed stone was furnished by an "unfair" firm, and that The Consolidated Stone Company which was the firm to furnish the

planed stone was what is known as an "unfair" firm on account of the fact that it does not employ solely union labor.

Further deponent sayeth not.

GEO. W. HOULSBY

Subscribed and sworn to before me this 19th day of September, A. D. 1924.

CLAUD D. RABER
Notary Public.

(Seal)

A and 104

EXHIBIT A

(Copy)

Chicago, August 22nd, 1924.

Mr. Herbert Bourne,
1211 High Street,
Ft. Wayne, Indiana.

Dear Sir:

Would you be interested in figuring about 940 superficial feet of carving on the Chicago Union Station? Upon receipt of word from you, we will be glad to send you either details or photographs of this carving, from which you can make your estimate. Stamped envelope for the convenience of your reply is enclosed herewith.

Yours truly,
(Sgd.) G. W. H.
Representative.

GWH/1P
GO

EXHIBIT B

(Copy)

Herbert Bourne
Architectural
Stone Carver and Modeler
1211 High St.
Ft. Wayne, Indiana.

August 23rd, 1924.

Mr. Geo. W. Houlsby,
Chicago, Ills.

Dear Sir:

Your favor of the 22nd inst. received. Am sorry at the present time I cannot give you a figure on your work. I was

notified by the Stone Cutters Union that on and after Aug. 1st no cutting or carving would be allowed to be done on any building where the planed stone was furnished by an unfair firm. I did not know this at the time you wrote me to figure your School in East Chicago. I received a letter from your Mr. Barton accepting my figure for the Todd Park School, but after receiving this notification from the Union, I was forced to write him declining the job, as I have about $3,000.00 work of carving in Union shops, that I should have had to throw up if I had done your job. You will understand the situation.

Thanking you for writing me, beg to remain,

Yours truly,

(Sgd.) HERBERT BOURNE

State of Illinois } ss.
County of Cook }

GEORGE W. HOULSBY, being first duly sworn, on oath deposes and says that he is a "representative" of The Consolidated Stone Company, and that he is in charge of sales at the Chicago Office of the said Company; that The Consolidated Stone Company is a corporation incorporated under the Laws of the State of Indiana; that on or about August 12th, 1924, the said The Consolidated Stone Company having a contract to furnish stone for the Todd Park Junior High School, at East Chicago, Indiana, entered into a sub-contract with one Herbert Bourne of Fort Wayne, Indiana, whereby the said Bourne undertook and agreed to do certain work consisting of stone carving on the said Todd Park Junior High School; that Herbert Bourne is a stone carver and modeler and that the said sub-contract was awarded to Herbert Bourne as a result of a call for bids, all as set forth in three certain letters between the said Herbert Bourne and The Consolidated Stone Company, copies of which letters are attached hereto marked, respectively, Exhibits A, B and C, and now by reference made a part hereof as fully to all intents and purposes as if here set out in full.

Deponent further sayeth that on or about August 22nd, 1924, he was advised by the office of The Consolidated Stone Company at Bedford, Indiana, that the said Herbert Bourne had declined to carry out the terms of his said sub-contract with The Consolidated Stone Company on said Todd Park Junior High School on the ground that the Journeymens

Stone Cutters Union had issued an order prohibiting its members from working on jobs for which the stone is furnished by an "unfair" firm, and that The Consolidated Stone Company is what is known as an "unfair" firm because it does not employ solely union labor; that subsequently, to-wit, on August 24th, deponent, the said George W. Houlsby, received a letter dated August 23rd signed by the said Herbert Bourne, a copy of which said letter is attached hereto marked Exhibit "D" and now by reference made a part hereof as if here
106 set out in full, by which letter the said Herbert Bourne likewise informed him, the deponent, that he, the said Bourne must decline to carry out the terms of his contract on account of the said order issued by the Journeymens Stone Cutter Union, whereby after August 1, 1924, no cutting or carving of stone would be allowed to be done on any building where the planed stone was furnished by an "unfair" firm through the fact that it does not employ solely union men.

Further deponent sayeth not.

GEO. W. HOULSBY

Subscribed and sworn to before me this 19th day of September, 1924.

CLAUD D. RABER
Notary Public

(Seal)

EXHIBIT A

(Copy)

Herbert Bourne
Architectural
Stone Carver and Modeler
1211 High St.
Fort Wayne, Ind.

Aug. 7th, 1924.

Mr. Geo. W. Houlsby,
Chicago, Ills.

Dear Sir:—

Am returning plans of School Bldg. to you today. I will execute the carving on the Todd Junior High School, East Chicago for the sum of $590, The Consolidated Stone Co. to furnish all models and scaffolding required for same. If this figure is satisfactory, let me hear from you as early as possible.

Yours truly,
(Sgd.) HERBERT BOURNE.

107 EXHIBIT B

Exhibits B and C.

(Copy)

Chicago, August 8th, 1924.

Mr. Herbert Bourne,
1211 High Street,
Ft. Wayne, Indiana.

Dear Sir:

We are in receipt of your proposal of the 7th covering carving on the Todd Park Junior High School, East Chicago, Indiana, for which please accept thanks. Same has been referred to our Bedford office for further attention, and we expect you will hear from them promptly.

Again thanking you for your kind attention in the matter, we are

Yours truly,
(Sgd.) G. W. H.
Representative.

GWH/IP
GO.

EXHIBIT C

Copy)

The Consolidated Stone Company,
Bedford, Indiana.

August 12th, 1924.

Mr. Herbert Bourne,
1211 High Street,
Ft. Wayne, Indiana.

Re: Todd Park Jr. High School, B-593,
East Chicago, Indiana.

Dear Sir:

We hereby accept your proposal of August 7th in the amount of $590.00 for executing the carving on the above School job, we to furnish scaffolding and models or full size details.

We will advise you as soon as this work is ready for you to proceed which will be within two or three weeks.

Very truly yours,
(Sgd.) T. A. Barton,
Manager Bedford Plants.

TAB:LAB
GWH

108 EXHIBIT D

Herbert Bourne
Architectural
Stone Carver and Modeler
1211 High St.
Ft. Wayne, Indiana.

August 23rd, 1924.

Mr. Geo. W. Houlsby,
Chicago, Ills.

Dear Sir:

Your favor of the 22nd inst. received. Am sorry at the present time I cannot give you a figure on your work. I was notified by the Stone Cutters Union that on and after Aug. 1st no cutting or carving would be allowed to be done on any building where the planed stone was furnished by an unfair firm. I did not know this at the time you wrote me to figure your School in East Chicago. I received a letter from your Mr. Barton accepting my figure for the Todd Park School, but after receiving this notification from the Union, I was forced to write him declining the job, as I have about $3,000.00 work of carving in Union shops, that I should have had to throw up if I had done your job. You will understand the situation.

Thanking you for writing me, beg to remain,

Yours truly,
(Sgd.) HERBERT BOURNE.

State of Illinois } ss.
County of Cook }

WARREN L. DILLMAN, being first duly sworn, on oath deposes and says that he is a "representative" of Matthews Brothers Company, a corporation incorporated under the laws of the State of Indiana, with its principal office in the City of Bloomington, Indiana; and with the corporate purpose of furnishing, fitting and cutting stone, etc.; that on or about August 30, 1923, the said Matthews Brothers Company entered into a contract to furnish, fit and carve stone on the Elks National Memorial Headquarters Building under construction in the City of Chicago, Illinois; that the deponent was given the duty of representing the said Matthews Brothers Company in the said City of Chicago, in charge of the

work of carrying out the said contract on the said Elks
109 National Memorial Headquarters Building; that in carrying out such duty the said deponent on behalf of Matthews Brothers Company employed one John R. Laing to do the work of fitting and cutting the stone so furnished on the said Elks National Memorial Headquarters Building.

That the said John R. Laing in pursuance of said contract of employment went to work on the said Elks National Memorial Headquarters Building and continued working thereon until the 31st day of July, 1924; that on the 25th day of July, 1924, the said John R. Laing informed deponent that he had received an order from the Journeymen's Stonecutters' Union to the effect that on and after August 1, 1924 no cutting or carving would be allowed to be done on any building where the planed stone was furnished by an "unfair" firm; that the said Matthews Brothers Company had furnished the planed stone on the said job, and is what is known as an "unfair" firm on account of the fact that it does not employ solely union labor; and that he the said John R. Laing, although anxious to carry out his said contract of employment, would be obliged to cease work on the said job on the 31st day of July, 1924, on account of the said order of the said Journeymen's Stonecutters' Union; and that the said John R. Laing accordingly did on the 31st day of July, 1924, cease to work on the said job on the said Elks National Memorial Headquarters Building.

Further deponent sayeth not.

WARREN L. DILLMAN

Subscribed and sworn to before me this 24th day of September, A. D. 1924.

RICHARD BENTLEY
Notary Public.

(Seal)

State of Indiana }
County of Howard } ss.

FRANK BESSON, being first duly sworn states that he has been engaged in the cut stone building business in the city of Kokomo, Indiana for approximately 15 years as a cut stone contractor. That on or about June 1st, 1924 he contracted for the cut stone work on the Armstrong-Landon office building, in the city of Kokomo, Indiana, and that on said date, or approximately said date, he contracted for all the cut

stone work on the Christian Science Church, in the city of Kokomo, Indiana. That immediately upon signing the 110 contract with the general contractors for the cut stone work on both the above named buildings this affiant entered into a contract with W. McMillan & Son, of Bedford, Indiana, which contract required W. McMillan & Son to furnish and ship to this affiant all of the cut stone used by this affiant on the above named buildings in the rough and semi-finished condition, both buildings requiring approximately 4000 cu. Ft. of stone.

Affiant further says that he purchased said stone so used by him from W. McMillan & Son, at Bedford, Indiana, in a semi-finished condition and that said stone was shipped from Bedford, Indiana to Kokomo, Indiana where affiants employees finish said stone by hand.

Affiant further states that all of his stone cutters are members of the Journeymen's Stone Cutters Association of North America and that they were such members at the time this affiant entered into the contract for the cut stone on the buildings above mentioned. That on or prior to August 22, 1924, the work on the Christian Science Church was approximately ½ finished and that the work on the Armstrong-Landon building was approximately one-third completed.

Affiant says that on or about August 22, 1924, Michael Mitchell, who is the President of the Journeymens Cut Stone Association of America came to Kokomo, Indiana and informed this affiant that the men belonging to the Association of which he is the president could do no further work for this affiant on either of the buildings above named and gave as his reason that the employees or stone cutters employed by this affiant belonged to the Journeymens Stone Cutters Association of North America and he would not permit any men of his association to complete work furnished or started by W. McMillan & Son, of Bedford, Indiana, for the reason that W. McMillan & Son employed men in cutting and planeing the stone used by this affiant which were unfair to the Journeymens Stone Cutters Association of North America and that he would not permit any member of the association to work on any material started and partially finished by the stone cutters or planermen other than members of the Journeymens Stone Cutters Association of North America.

Affiant further says that on account of the order of said Michael Mitchel the men who this affiant had employed as stone cutters for the work above mentioned has quit and re-

fused to work for this affiant until ordered back by the President of their Association.

Affiant further says that on account of the order of said Micheal Mitchel and by reason of his employees so quit-
111 ting he has not been able to make any progress whatever on the completion of said contracts for the cut stone work on said buildings. That he has been unable to employ any men of experience to work for him as stone cutters. That the nature of the work done by these employees of this affiant as stone cutters is such that it requires men of experience. Affiant says that he has been informed by Micheal Mitchel that the best thing he could do would be to get in touch with W. McMillan & Son, by letter and persuade them to employ men who were members or belonged to his association to do the planeing and cutting of stone and if W. McMillan & Son would employ men belonging to his Association he would have no objection to affiant's employees resuming their work on the buildings above named.

Affiant avers that he had employed on the above named buildings three stone cutters all of whom quit at the request of the President of the Association.

Affiant says that he uses approximately 20 to 25 cars of stone per year, all of which has been purchased from W. MacMillan & Son of Bedford, Indiana. Affiant further avers that during the past few years he has purchased practically all of his stone in a rough and unfinished condition from W. MacMillan & Son and that during all of said time the business relations between W. McMillan & Son and this affiant has been very agreeable in every respect.

FRANK BESSON.

Subscribed and sworn to before me this 16 day of September, 1924.

CARL N. BROV,
Notary Public.

(Seal)

My commission expires Sept 26 1925.

State of Colorado, } ss.
City & County of Denver. }

AFFIDAVIT OF JAMES A. FERNALD OF FERNALD & WALTON, A PARTNERSHIP.

JAMES A. FERNALD, being first duly sworn, declares upon his oath that he is a member of and manager of Fernald

& Walton, a partnership engaged in cut stone contracting in the city of Denver, County of Denver, State of Colorado; that Fernald & Walton are at this time and have been since Feb-
ruary 1, 1922, engaged in the aforementioned business in
112 the aforementioned city; that during said period said firm has supplied the cut stone entering in numerous buildings erected in the city of Denver, the State of Colorado and the State of Wyoming, namely, Court House, Grand Junction, Colorado; Library Building, University of Wyoming, Laramie, Wyoming; State Reformatory Building, Worland, Wyoming; Scottish Rite, Consistory Building, Cheyenne, Wyoming; State Normal School Building Alamoosa, Colorado, and others too numerous to mention.

Affiant avers that in the conduct of the business of Fernald & Welton it is the custom of said firm to obtain from the quarries at or in the vicinity of Bedford, Indiana, the machined or semi-finished stone necessary to supply the cut stone entering into the contracts it undertakes to execute; that it is further the custom of the aforementioned form, when aforementioned machined or semi-finished stone is delivered upon the building site, to further finish said semi-finished material in conformity with plans and specifications of the architects for erection in the buildings.

Affiant further avers that prior to August 1, 1924, Fernald & Walton in the further finishing of machined or semi-finished stone obtained from the quarries located at or in the vicinity of Bedford, Indiana, employed as stone cutters to do said further finishing, members of the Journeymen Stone Cutters' Association of North America, and that prior to August 1, 1924, there existed no disagreements between Fernald & Welton and the stone cutters, members of the Journeymen Stone Cutters' Association of North America, whom Fernald & Welton employed in the conduct of its business.

Affiant further states that on or about February 28, 1923, Fernald & Walton received a letter from Mr. George Taylor, a member of the executive board of the Journeymen Stone Cutters' Association of North America, marked Exhibit #1, and herewith quoted in full as follows:

113 EXHIBIT #1. Ex. No and

Journymen Stone Cutters' Association of North America
George Taylor
Member of the Executive Board
District No. 1
Hotel Carlton
15th Glenarm Sts.
Denver, Feb. 27th, 1923.

Messrs. Fernald & Welton.
Sirs

I wish to inform you that the members of our organization will refuse to work on any future contracts that may be had by your firm, where the stone has been planed or partly cut by men working in opposition to our organization.

Yours sincerely,
GEORGE TAYLOR,
Hotel Carlton,
15th & Glenarm Sts.
Denver, Colorado.

Affiant further avers that since the position of the Journeymen Stone Cutters' Association of North America, set out in the letter above quoted, indicated an interference in the customary conduct of the business of Fernald & Walton, affiant as manager of Fernald & Welton addressed a communication to George Taylor, member of the executive board of the Journeymen Stone Cutters' Association, marked Exhibit #2, and herewith quoted in full as follows:

EXHIBIT #2.

"2084 Elm St.

February 28th.
1923

Mr. Geo. Taylor, M.E.B. Dist. #1
Denver, Colo.

Dear Sir:

We wish to acknowledge the receipt of your Notice dated the 27th. inst. relative to working on any contracts of ours where the stone is being planed by men working in opposition to your Organization.

114 In reply we wish to state that we will have to continue the way we have been in the past, until such time that you can furnish us with a list of firms, or quarries where they make a business of sawed and planed stone, that your members consider fair, or that are not working against your organization.

Trusting that we may have the pleasure of hearing from you at once, and thanking you in advance for this list, we beg to remain,

Yours very truly,
FERNALD & WALTON,
By _____

P.S. Referring to the list of firms or quarries as mentioned above, we are asking for the firms or quarries in the Bedford, Indiana, district.

Affiant further avers that on the same date, in order that the position of Fernald & Walton might be made clear to and a definite answer obtained from the general office of the Journeymen Stone Cutters' Association, a communication was addressed to the Journeymen Stone Cutters' Association (Attention Mr. Joseph Blacey), marked Exhibit #3, and herewith quoted in full, as follows:

EXHIBIT #3.

2084 Elm St.

February 20th.
1923

Journeymen Stone Cutters Assoc. of F. A.
Indianapolis, Indiana.
Attent. of Mr. Joseph Blacey.

Dear Sirs:—

Would you kindly advise us if it would be possible at this time to secure a list of firms in the Bedford, Indiana, district that are considered fair and that are not working against your organization, or firm that are employing your members on the planers, Etc.

As stated previously in all our letters that we were working entirely with your members and will always do so, providing we can get the proper information as to who and where we can buy our stone from, to meet our conditions, which are not interfering or conflicting in any way with the members of the J. R. C. A. of N. A.

153 Trusting that we may have the pleasure of hearing from you, at once, also thanking you in advance for the list of firms, as mentioned above, we beg to remain,

Yours very truly,

FOSSETT & WALTON.

Affiant further avers that on or about March 10th, Fossett & Walton received a communication from Mr. Joseph Bluso, General Secretary of the Journeymen Stone Cutters' Association of North America, in reply to Fossett & Walton's letter of February 28th, 1923, marked Exhibit #8, and herewith quoted in full, as follows:

EXHIBIT #8.

Journeymen Stone Cutters Association of North America
Joseph Bluso
General Secretary-Treasurer
Indianapolis, Ind., May 7, 1923

Messrs. Fossett & Walton,
2054 Elm Street,
Denver, Colo.

Gentlemen:

In reply to your letter of inquiry will say that our organization does not direct any contractor in line of contractors, as to where or from whom they are to obtain their stone, nor even request them, as that is something beyond the jurisdiction of a labor organization. Owing to certain parties in the Bedford limestone district have applied for and granted a temporary injunction against our organization, and one of the provisions of said injunction is that we refrain from sending out a "Card" or "unfair list" of firms employing our members, I am unable to comply with your request.

Our organization has repeatedly endeavored to obtain a meeting with the employers in the limestone district operating our organization, has pointed them that we were ready to meet them with open minds and adjust whatever differences existed between the two organizations, but they have not as repeatedly refused to meet; they said they were satisfied with conditions as they were, and saw no reason why they should meet the representatives of our organization or give it any recognition; besides this, they will not employ a member of our organization unless he first severs his membership to

signing an application blank and pay a part of an initia-
116 tion fee to join a union sponsored by the employers. Our General President has taken the position that if employers will not employ our members in one place, we will decline to work for them in another, or to finish any work that has been started, or partly completed by the men these employers are using to combat our organization.

Very truly yours,

JOSEPH BLASEY,
Gen. Sec.

Affiant further avers, that as the position of the Journeymen Stone Cutters' Association of North America, set out in the aforementioned letters, if applied to Fernald & Walton, would practically put Fernald & Walton out of business, a further letter was addressed to Mr. Joseph Blasey, General Secretary of the Journeymen Stone Cutters' Association, under date of March 13, 1923, marked Exhibit #5, and herewith quoted in full as follows:

EXHIBIT #5.

2084 Elm St.

March 13th, 1923

Mr. Joseph Blasey Gen Sect. J. S. C. A. of N. A.
Indianapolis, Indiana.

My Dear Mr. Blasey:

We wish to acknowledge the receipt of your letter dated the 7th inst. also thank you for this information.

Undoubtedly from the way your letter reads it will cause a hardship on us including all your members in this territory, please do not take this in a way that you should feel that we were working against your organization, it is just the reverse as we have tried to do all that was possible, and in fact there is not room for a slight complaint at any time.

To be frank with you, we have about been the only ones that keep the men going for the past 10 months, on the Grand Junction job we had about four or five cutters continuously also two carvers, in Laramie we had about three or four, and in Cheyenne we have about four there just now, and have at all times given them what was considered fair wages, and also paid there carfare from job to job, at it is now we are paying them $9.00 for the eight hours. We have never tried to ask them for a single thing and at all times it was left to thier intire judgment what they should do.

117 Here is where the shoe is going to pinch on the work we are about to take, if conditions are going to be as they were put to us by your Mr. George Taylor. In the first place we have not any machinery to machine our stone, this we buy from the Bedford district, and all the hand cutting is entirely done on the job which we cut with only members of your organization, and if comes to the shown down and that we would not be able to buy stone in the machine finish from Bedford, then the whole thing in the nut shell is that we are put out of business and all the men that we keep going will be out of work, we are also asking you to bear in mind that we have not had a job where a stone cutter out side members of your organization cut any of the stone or layed a tool of any kind not counting the machine work, naturally if this is going to be the case, what are we going to do.

Instead of keeping the men going out here, this work will have to be taken by firms using #2 men at Bedford and encouraging them alone with this work, that is the way they will feel, whereas if we have the permission to buy our stone as we have been doing in the past, from firms that do not hire any stonecutters at all it would take the work from the #2 men and help to discourage the continued employment of these #2 men.

Is it not possible that you could strain a point to let us continue the way we have been doing in the past, in order to keep things going, to be frank with you, I believe that we are the only Cut stone firm in this part of the country that has sufficient work to keep the G. U. men working, and that we should be given some credit in taking the work from the firms that employ Scab cutters and giving it to the G. U. Men only.

To our estimation there are only three firms in the Bedford district that make a business of machine dressed stone only and that they do not employ any stone cutters at all, these are the firms we get bout stone from, and that we should not be classed with other firms that employ unfiar labor meaning cutters.

We are about to sign up for two additional jobs that has considerable stone cutting and which we must be advised by you if we can continue in the same way as we have been doing in the pass therefore we do not want to tie up any work on account of some missunderstanding that can be easily settled now, one thing you can be assured of, and that is after this stone is machine finish you can rest assure that no men byt G. U. Stone cutters and carvers will touch this work.

We understand that there has been considerable jeal-
118 ousy among the stone firms in Denver and also the cutters, because we were using an out side material, which we can not understand, and the same time giving them the work, why this is we do not k ow, and it has laso been rummered that we were agents of me stone firm in Bedford, which is not true, but we do know of one frim that is representing a Bedford firm, but nothing is said of this, we have also had it said that we were not employing an Colorado men, the fact is that we do not know or did not know where some of them came, and to this day we do not know where two of them did come from, only we know that they were G. U. Men and that was all that was sufficient. This was told to us by your Mr. Geo. Taylor, who seems to be favoring all the other bosses in and around Denver, but us, seems to us that has a personal grudge in for us no matter what is done by the others. Now gentlemen this is not a fair deal especially when we can provide the work and give them a wage that is satisfactory, to all concerned, why should we be picked on for the GU men in colorado to favor all the old bosses, this is not what your organization got together for.

We would be glad to send you a copy of this letter at any time you may request it, as we wished to be placed on record as as firm that has been and always work fair with your organization also we are suggesting that our case be placed in the hands of all your Executive Board if you can not give us the final decision as to what we can do on the new business that we are about to sign up for.

Thanking you in advance for an early reply and trusting that we may be able to get together and settle this matter out here for once and for all time, Assureing you our assistance in any thing that we can do to better conditions for all con cerned, We beg to remain,

Yours very truly,

FERNALD & WALTON.

Affiant further avers that on or about March 22, 1923, he received from Mr. Joseph Blasey, General Secretary of the Journeymen Stone Cutters' Association of North America, a communication under date of March 19, 1923, in reply to the above quoted letter, marked Exhibit #6, and herewith quoted in full, as follows:

119 EXHIBIT #6. Ex.

Journeymen Stone Cutters Association of North America
Joseph Blasey,
General Secretary-Treasurer
Indianapolis, Ind.

Mr. Jas. A. Fernald,
2084 Elm St.,
Denver, Colo.

Dear Mr. Fernald:

I am in receipt of your letter of March 13th, and have carefully read same. In reply will say that I do not know there is anything further that I can add to that which was contained in the previous letter.

I regret to know that you feel your firm is being discriminated against by members of Denver Local; we fail to understand why such should be the case; it is not in keeping with the fundamental principles of the organization; any act of discrimination on the part of our members, if brought to our attention, I assure you will be given immediate attention to the end that they be corrected and there be no repetition

As to the other matter you write of, I am sorry, but there is nothing further I can say, when our President issued the order, it was general, and it could not be otherwise without being subjected to the criticism of showing discrimination. The organization does not wish to see any employer injured or embarrassed, and if any are responsible they are those employers fighting our organization who have compelled the adoption of defensive methods. They have repeatedly refused to meet the representatives of our organization to try and adjust whatever differences existed between the employers' association and the union; they say they have all the men they need and see no reason why they should meet with our representatives—they are satisfied with conditions; furthermore they refuse to employ our members unless such members first refute their organization, sign an application blank to join a union sponsored by the employers. The position of the organization is that if these employers will not hire our members in one place, then our members will decline to wirk for them in any other place, or to finish stone that is started,

or partly completed by the men the employers fighting our organization are using to combat us.

With kindest regards, I beg to remain,

Very truly yours,

JOSEPH BLASEY,

Gen. Sec.

Affiant further avers that on or about March 22nd Fernald & Walton received from Mr. George Taylor, a communication under date of March 21, 1923, marked Exhibit #7 and herewith quoted in full as follows:

EXHIBIT #7.

Journeymen Stone Cutters' Association of N. A.
Hotel Carlton,
15th and Glenarm Sts.
Denver, March 21, 1923.

Messers Fernald and Walton
Dear Sirs.

In answer to yours of Feb. 28th I have been rather delayed in sending you an answer. However, the information you requested is here. The firms that our Members are working for as as follows.

Bedford, Ingalls Stone Co.
Brooks " "
Bloomington Bowman and King Stone Co.
Alexander and King Stone Co.
Ellettisville Thompson Stone Co.
Sterling, Colitic Stone Co.
Harding, and Cogswell Stone Co.

I know you wrote to Headquarters for this information, as I believe I was rather long in answering. We expect our members will be working for two more firms before you receive this letter. Hoping this will supply you with your request, I beg to remain,

Yours sincerely,

GEO. TAYLOR.

Affiant further avers that since the firms named in letter of George Taylor, member of the Executive Board of the Journeymen Stone Cutters' Asociation of North America, were not quarrymen engaged generally in supplying machined or semi-machined material to cut stone contractors, and thus

did not afford Fernald & Walton a satisfactory source from which they could purchase material and conduct their business as customary, Fernald & Walton determined to and
121 did exercise their prerogative of purchasing their machined material in an open market.

Affiant further avers that on February 2, 1914, Fernald & Walton entered into a contract with Alex Simpson Jr. Co. to furnish complete the cut stone work for the Fort Collins High School Building, Fort Collins, Colorado. That on February 15, 1924, Fernald & Walton placed with W. McMillon & Son of Bedford, Indiana, an order for all of the machined stone required under this contract, amounting to approximately 7500 cubic feet; That W. McMillan & Son shipped said approximate 7500 cubic feet to Fernald & Walton at Fort Collins, Colorado, where it was all received prior to August 1, 1924.

Affiant further avers that on February 9th, 1924 Fernald & Walton entered into a contract with P. J. Sullivan of Denver, Colorado, to supply all of the cut stone completely fabricated for the School Building (Mitchell Junior High), School Board District No. 1, Denver, Colorado. That on February 15, 1924, Fernald & Walton placed with W. McMillan & Son of Bedford, Indiana, an order for all of the machined or semi-finished stone for said Mitchell Junior High School Building, amounting to approximately 24000 cubic feet.

Affiant further avers that on July 30th, 1924, there had been received at Denver, Colorado, from W. McMillan & Son of Bedford, Indiana, 14 cars, or approximately 8000 cu. ft. of machined stone for said Mitchell Junior High School Buildign; that on July 30th, Fernald & Walton had employed as stone cutters on said stone for said Mitchell Junior High School Building, John Cook, B. F. James, F. James, J. Graham, William Emrie, and H. Whitehouse, all members of the Journeymen Stone Cutters' Association of North America; that on July 30th, B. F. James informed the affiant that the Denver Local of the Journeymen Stone Cutters' Association of North America had received notice to stop work for Fernald & Walton on all of the work of Fernald & Walton; that on August 1, 1924, the stone cutters aforementioned, members of the Journeymen Stone Cutters' Association of North America, did withdraw from the work of Fernald & Walton.

Affiant further avers that on or about August 1st he reported this strike of the stonecutters employed by Fernald & Walton to the Industrial Commission of Colorado; that as a

result of activities by the Industrial Commission of Colorado the men were ordered to return to work by this International Union pending a hearing of the case by the
122 Industrial Commission of Colorado; that but three of the six men employed prior to August 1st returned to work, namely, John Cook, F. James and B. F. James, that a hearing was held before the Industrial Commission of Colorado on August 26, 1924, and a further or final hearing before said Commission on August 30, 1924; that on September 4, 1924, the Industrial Commission of Colorado, rendered a decision on said hearing providing that the stone cutters, members of the Journeymen Stone Cutters Association of North America should continue working and complete the work on said Mitchell Junior High School Building; that on said date but one stone cutter, John Cook, remained at work.

Affiant further avers that at this time, by reason of this strike of the stone cutters, members of the Journeymens Stone Cutters' Association of North America, Fernald & Walton is far behind in its work; that Fernald & Walton have made determined efforts to obtain stone cutters, without avail; that at the present time they require the services of eight or ten stone cutters to catch up with their work and keep up with the progress of the building, and that this action of the Journeymen Stone Cutters' Association in withdrawing its members from the work is causing Fernald & Walton a substantial monetary damage.

Affiant further avers that due to this action of the Journeymen Stone Cutters Association of North America, it was necessary for Charles Walton, a member of the partnership of Fernald & Walton, to go to Fort Collins, Colorado, and himself do the work of a stone cutter in order to complete the work on the Fort Collins High School Building.

Affiant further avers that if Fernald & Walton are to be confined to the limited source of supply in the purchase of semi-finished material, as pronounced by the Journeymen Stone Cutters' Association to be satisfactory to that organization, Fernald & Walton by reason of being unable to obtain satisfactory prices and service from such limited source will be unable to compete with others engaged in the cut stone business and will necessarily be forced out of business; that if Fernald & Walton exercise their prerogative and purchase their material in an open market most advantageous to Fernald & Walton, this firm will be, by its inability to obtain stonecutters, forced out of business.

Affiant further avers that Farnald & Walton have since engaging in business obtained practically all of the machined or semi-finished stone required in the execution of its 123 contracts, amounting to approximately 130 cars, from W. McMillan & Son, and that its relations with W. McMillan & Son and the services rendered by W. McMillan & Son have been agreeable and satisfactory in every respect.

JAMES A FERNALD

Subscribed and sworn to before me this 24th day of September, A. D. 1924.

My commission expires November 27, 1924.

ROSA M. LAYTON
(Seal) *Notary Public*

State of Colorado,
City and County of Denver. } ss.

JAMES A. FERNALD, being first duly sworn, declares upon his oath that the attached documents, identified as Exhibits #1 and #7, are the original letters received from George Taylor, member of the Executive Board of the Journeymen Stone Cutters' Association of North America; that documents attached, marked as Exhibits #4 and #6 are original letters received from Joseph Blasey, General Secretary, Journeymen Stone Cutters' Association of North America; that documents attached marked Exhibits #3 and #5 are carbon copies of letters addressed to Joseph Blasey, General Secretary of the Journeymen Stone Cutters' Association of North America by Fernald and Walton, and that document attached, marked Exhibit #2 is carbon copy of a letter addressed by Fernald & Walton to George Taylor, member of the Executive Board of the Journeymen Stone Cutters' Association of North America, all of which are submitted in affidavit of James A. Fernald of Fernald & Walton, a partnership.

JAMES A FERNALD

Subscribed and Sworn to before me by James A. Fernald this Twenty-fourth day of September, A. D. 1924.

My Commission Expires November 27th, 1924.

ROSA M. LAYTON
(Seal) *Notary Public in and for the City and County of Denver, State of Colorado.*

124 EXHIBIT #1

Journey Stone Cutters Association
Affiliated with the American Federation of Labor Building Trade Department and the Trades and Labor Congress of Canada

George Taylor
Member of the Executive Board District No. 1

Hotel Carlton
15th Glenarm Sts
Denver, Feb. 27th 1923.

Messrs Fernald and Walton
Sirs

I wish to inform you that the Members of our Organization will refuse to work on any future contracts that may be had by your firm, where the stone has been planed or partly cut by men working in opposition to our Organization

Yours Sincerely
GEORGE TAYLOR
Hotel Carlton
15th Glenarm Sts.
Denver
Colo.

(Envelope)

George Taylor
Hotel Carlton, 15th and
Glenarm Sts. Denver

Mers. Fernald Walton
2084 Elm. St.
Denver Colo.

Denver
3 6-30 AM (Stamp)
Colo.

EXHIBIT #2

2084 Elm St.
February 28th.
1923

Mr. Geo. Taylor. M. E. B. Dist. #1
Denver, Colo.

Dear Sir?

We wish to acknowledge the receipt of your Notice dated

the 27th. inst. relative to working on any contracts of ours
125 where the stone is being planed by men working in opposition to your Organization.

In reply we wish to state that we will have to continue the way we have been in the past, until such time that you can furnish us with a list of firms, or quarries where they make a business of sawed and planed stone, that your members consider fair, or that are not working against your organization.

Trusting that we may have the pleasure of hearing from you at once, and thanking you in advance for this list, we beg to remain,

Yours very truly;
FERNALD & WALTON.
By JAS A FERNALD

P. S.

Referring to the list of firms or quarries as mentioned above, we are asking for the firms or quarries in the Bedford. Indiana. district.

EXHIBIT #3

Ex. No

2084 Elm St.

February 28th.
1923.

Journeymen Stone Cutters Assoc. Of N. A.
Indianapolis, Indiana.

Attent. of Mr. Joseph Blasey.

Dear Sirs:

Would you kindly advise us if it would be possible at this time to secure a list of firms in the Bedford Indiana, district that are considered fair and that are not working against your organization, or firms that are employing your members on the planers, Etc.

As stated previously in all aor letters that we were working entirely with your members and will always do so, providing we can get the proper information as to who and where we can buy our stone from, to meet our conditions, which are not interfering or conflicting in any way with the members of the J. S. C. A. of N. A.

Trusting that we may have the pleasure of hearing from

you, at once, also thanking you in advance for the list of firms, as mentioned above. We beg to remain,

Yours very truly;

FERNALD & WALTON.
JAS A FERNALD

126 EXHIBIT #4

Journeymen Stone Cutters Association of North America
Affiliated with
American Federation of Labor,
Building Trades Department
American Federation of Labor,
Trades and Labor Congress of
Canada
Journeymen Stone Cutters Association
of
North America
Organized March 1st 1853

General Office
324 American Central
Life Bldg. Indianapolis,
Indiana

M. W. Mitchell,
General President
Joseph Blasey,
General Secretary-Treasurer
Indianapolis, Ind.,
Mar. 7, 1923.

Messrs. Fernald & Walton,
2084 Elm Street,
Denver, Colo.

Gentlemen:

In reply to your letter of inquiry will say that our organization does not direct any contractor, or firm of contractors, as to where or from whom they are to obtain their stone, nor even request them, as that is something beyond the jurisdiction of a labor organization. Owing to certain parties in the Indiana limestone district have applied for and granted a temporary injunction against our organization, and one of the provisions of said injunction is that we refrain from sending out a "fair" or "unfair list" of firms employing our members, I am unable to comply with your request.

Our organization has repeatedly endeavored to obtain a meeting with the employers in the limestone district opposing our organization; has assured them that we were ready to meet them with open minds and adjust whatever differences existed between the two organizations; but they have just as repeatedly refused to meet; they said they were satisfied with conditions as they were, and saw no reason why

they should meet the representatives of our organization or give it any recognition; besides this, they will not employ a member of our organization unless he first refutes his membership by singing an application blank and pay a part of an initiation fee to join a union sponsored by the employers.

Our General President has taken the position that if em-
127 ployers will not employ our members in one place, we will decline to work for them in another, or to finish any work that has been started, or partly completed by the men these employers are using to combat our organization.

Very truly yours,

JOSEPH BLASEY
Gen. Sec.

EXHIBIT #5 Ex. N

2084 Elm St.

March 13th, 1923.

Mr Joseph Blasey Gen Sect. J. S. A. A. of N. A.
Indianapolis. Indiana.

My Dear Mr. Blasey:

We wish to acknowledge the receipt of your letter dated the 7th. inst, also thank you for this information.

Undoubtedly from the way your letter reads it will cause a hardship on us including all your members in this territory, please do not take this in a way that you should feel that we were working against your organization, it is just the reverse as we have tried to do all that was possible, and in fact there is not room for a slight complaint at any time.

To be frank with you, we have about been the only ones that keep the men going for the past 10 months, on the Grand Junction job we had about four or five cutters continuously also two carvers, in Laramie we had about three or four and in Cheyenne we have about four there just now, and have at all times given them what was considered fair wages, and also paid there carfare from job to job, as it is now we are paying them $9.00 for the eight hours. We have never tried to ask them for a single thing and at all times it was left to their intire judgment what they should do.

Here is where the shoe is going to pinch on the work we are about to take, if conditions are going to be as they were put to us by your Mr George Taylor, In the first place we have not any machinery to machine our stone, this we buy from the Bedford district, and all the hand cutting is en-

tirely done on the job which we cut with only members of your organization, and if comes to the show down and that we would not be able to buy stone in the machine finish from Bedford, then the whole thing in the nut shell is that we are put out of business and all the men that we kept going will be out of work, we are also asking you to bear in mind
128 that we have not had a job where a stone cutter out side members of your organization cut any of the stone or layed a tool of any kind not counting the machine work, naturally if this is going to be the case, what are we going to do.

Instead of keeping the men going out here, this work will have to be taken by firms using #2 men at Bedford and encouraging them alone with this work, that is the way they will feel, whereas if we have the permission to buy our stone as we have been doing in the past, from firms that do not hire any stonecutters at all it would take the work from the #2 men and help to discourage the continued employment of these #2 men.

Is it not possible that you could strain a point to let us continue the way we have been doing in the past, in order to keep things going, to be frank with you, I believe that we are the only Cut stone firm in this part of the country that has sufficient work to keep the G. U. men working, and that we should be given some credit in taking the work from the firms that employ Scab cutters and giving it to the G. U. Men only.

To our estimation there are only three firms in the Bedford district that make a business of machine dressed stone only and that they do not employ any stone cutters at all, these are the firms we get our stone from, and that we should not be classed with other firms that employ unfair labor meaning cutters.

We are about to sign up for two additional jobs that has considerable stone cutting and which we must be advised by you if we can continue in the same way as we have been doing in the pass therefore we do not want to tie up any work on account of some missunderstanding that can be easly settled now, one thing you can be assured of and that is after this stone is machine finish you can rest assured that no men but G. U. Stone cutters and carvers will touch this work.

We understand that there has been considerable jealously amoung the stone firms in Denver and also the cutter, becouse we were using an out side material, which we can not

understand, and the same time giving them the work, why this is we do not know, and it has also been rummered that we were agents of some stone firm in Bedford, which is not true, but we do know of one firm that is representing a Bedford firm, but nothing is said of this, we have also had it said that we were not employing an Colorady men, the fact is
129 that we do not know or did not know where some of them came, and to this day we do not know where two of them did come from, only we knew that they were G. U. Men and that was all that was sufficient. This was told to us by your Mr. Geo. Taylor, who seems to be favoring all the other bosses in and around Denver, but us, seems to us that he has a personal grudge in for us no matter what is done by the others, Now gentlemen this is not a fair deal especially when we can provide the work and give them a wage that is satisfactory, to all concerned, why should be be picked on for the GU Men in colorado to favor all the old bosses, this is not what your organization got together for.

We would be glad to send you a copy of this letter at any time you may request it, as we wished to be placed on record as as firm that has been and always work fair with your organization also we are suggesting that our case be placed in the hands of all your Executive Board if you can not give us the final deision as to what we can do on the new business that we are about to sign up for.

Thanking you in advance for an early reply and trusting that we may be able to get together and settle this matter out here for once and for all time, Assureing you our assistance in any thing that we can do to better conditions for all concerened, We beg to remain,

Yours very truly;

FERNALD & WALTON

130 EXHIBIT #6

Journey Stone Cutters Association of North America
Affiliated with
American Federation of Labor, Buildings Trades Department
American Federation of Labor, Trades and Labor Congress of Canada

General Office
324 American Central Life Bldg. Indianapolis, Indiana

Journeymen Stone Cutters Association
of
North America
Organized March 1st 1853

M. W. Mitchell,
General President
Joseph Blasey,
General Secretary-Treasurer
Indianapolis, Ind.,
Mar. 19, 1923.

Mr. Jas. A. Fernald,
2084 Elm St.,
Denver, Colo.

Dear Mr. Fernald:

I am in receipt of your letter of March 13th, and have carefully read same. In reply will say that I do not know there is anything further that I can add to that which was contained in the previous letter.

I regret to know that you feel your firm is being discriminated against by members of Denver Local; we fail to understand why such should be the case; it is not in keeping with the fundamental principles of the organization; any act of discrimination on the part of our members, if brought to our attention, I assure you will be given immediate attention to the end that they be corrected and there be no repetition.

As to the other matters you write of, I am sorry, but there is nothing further I can say; when our President issued the order, it was general, and it could not be otherwise without being subjected to the criticism of showing discrimination. The organization does not wish to see any employer injured or embarrassed, and if any are responsible they are those employers fighting our organization who have compelled the adoption of defensive methods. They have repeatedly refused to meet the representatives of our organization to try and

adjust whatever differences existed between the employ-
131 ers' association and the union; they say they have all the men they need and see no reason why they should meet with our representatives—they are satisfied with conditions; furthermore they refuse to employ our members unless such members first refute their organization, sign an application blank to join a union sponsored by the employers. The position of the organization is that if these employers will not hire our members in one place, then our members will decline to work for them in any other place, or to finish stone that is started, or partly completed by the men the employers fighting our organization are using to combat us.

With kindest regards, I beg to remain,

Very truly yours,

JOSEPH BLASEY
Gen. Sec.

EXHIBIT #7.

Journeymen Stone Cutters Association
of
North America
Organized March 1st 1853

Affiliated with the American Federation of Labor Building Trades Department and the Trades and Labor Congress of Canada

George Taylor
Member of the Executive Board District No. 1

Hotel Carlton
15th and Glenarm Sts

Denver, March, 21st 1923

Mesers Fernald and Walton
Dear Sirs

In answer to yours of Feb 28th I have been rather delayed in sending you an answer. However the information you requested is here. The firms that our Members are working for are as follows

Bedford. Ingalls. Stone. Co.
— Brooks — —
Bloomington Bowman and King Stone Co.
Alexander — King Stone Co.
Ellettisville Thompson. Stone Co.
Sterling. Colitic Stone Co.
Harding. and Cogswell. — —

I know you wrote to Headquarters for this information
132 as I believe I was rather long in answering. We expect our members will be working for two more firms before you recieve this letter. Hoping this will suply you with your request. I beg to remain

Yours Sincerely

GEO. TAYLOR

State of Colorado, } ss.

BEFORE THE INDUSTRIAL COMMISSION OF COLORADO.

In the Matter of Journeymen Stone Cutters' Association of North America, Denver Local, *Employees*, *vs.* Fernald & Walton, *Employers.* } Transcript of Proceedings.

This cause came on for hearing at the hour of ten o'clock A. M., on the 26th day of August, A. D. 1924, at the State Office Building, Denver, Colorado, before the Industrial Commission of Colorado, pursuant to notice issued by the Commission.

Appearances:

For the Commission, Hon. William I. Reilly, Chairman; Hon. Joseph C. Bell, Commissioner; Hon. Thomas Annear, Commissioner.

For the Employees, Frank James, Esquire; John Graham, Esquire; B. F. James, Esquire; John Cook, Esquire.

For the Employer, James A. Fernald, Esquire.

And thereupon the following proceedings were had, to-wit:

JAMES A. FERNALD, having been first duly sworn according to law, on oath testified as follows:

By Chairman Reilly:

Q. State your name?

A. James A. Fernald.

133 Q. What is your business?
A. Cut stone contractor.
Q. How long have you been in that business in Denver?
A. Going on two and one-half, three years, something like that.
Q. Were you in the business before that some place else?
A. Not in business, but I was managing different firms.
Q. What, if anything, happened in regard to the work you are doing in Denver at the present time, on or about the first of August?
A. Just simply the men stopped work.
Q. Did they give any notice to you as to why they stopped work?
A. No official notice, just the mere notice they stopped work on account of the stone was supposed to be unfair.
Q. And what is this stone, what do you call it?
A. Indiana limestone.
Q. Have been using this stone for some time?
A. I have.
Q. Did you have any prior notice or information in regard to this stone that is called "unfair stone"?
A. Not any more that the general understanding all over the country that there was going to be a strike pulled, or this stone was unfair, but I didn't know who was supposed to be unfair.
Q. Do you know how these men were called off the job?
A. By a circular letter issued by the International Union.
Q. Was that a general letter?
A. To all the locals.
Q. So that this cessation of work was general all over the country?
A. It was general all over the country, but the locals was told not to—I think you have a copy on record here which I think would give the whole thing.
Q. Do you know whether or not they stopped work in other cities on account of this stone?
A. They have not, from the information I have at hand.
Q. Do you know of any place where they stopped work on account of this stone?
A. No, I do not know of any place.
Q. Have you information they have not stopped work?
A. I have, by a telegram issued by the man I buy the stone of, and also from another man representing the Consolidated Stone Company of Bedford, Indiana.

134 Q. Have you inquired as to why they have not stopped work after they received the same notice as the people here and in other places?

A. I have in a small way, stating that, asking the question as to why they didn't stop, and they thought it wasn't necessary to stop.

Q. In other words, it is your understanding that the local unions in other vicinities did not comply with the request of the International Union?

A. That is it, right there. I can explain that to make it more clear. As I understand, the General Stone Cutters' Association have issued orders not to work on any stone that was planed, partly cut, or touched, by unfair labor, which, in our case, there is no stone cutters that cut our stone, but there are planer men. These planer men are organized, but this organization is not recognized by the International Union. In Oklahoma, in Kansas and Missouri, and several other states, planer men are not organized; they may be organized, as far as I know, but I know most of them don't belong to the union. They are working on this stone, planing this stone, and the General Union Stone Cutters are cutting it. This stone here is being planed by the union men; the stone cutters are working under them. I suppose that will kind of clear the matter up there a little bit.

By Commissioner Annear:

Q. What condition does that stone come to you in?

A. It is a machine-finished stone.

Q. Is this machine finish done by union labor back there?

A. It isn't union labor, but the union is not recognized by the General Stone Cutters of America.

Q. Is the stone that is being used in other places sent in the same condition that yours is?

A. That is what I understand.

Q. To what other place, that you know of, did the International Secretary send the notice for the union men to quit using this stone?

A. In the copy of the circular letter I got it is issued to all locals all over the United States.

Q. What places do you know of where the union men did not refuse to handle this stone?

A. I can't say definitely that I know of any, except about the telegram I received from the material men, stating we were the only ones being held up; that was William McMillan & Son.

135 Q. Are you using the stone on the school house out here?

A. Yes, sir.

Q. How long will it take to complete that?

A. It will take six or seven or eight months, something like that, six or seven months, I would judge off-hand—off-hand, six or seven months.

Q. If the same condition exists in other places using this stone, why shouldn't they be called out in other places?

A. I think that letter was left to the discretion of each local, to use their own opinion, if I am not mistaken.

By Commissioner Bell:

Q. What school building are you working on?

A. Maria Mitchell High School.

Q. That is a public school for Denver?

A. For the Board of Education, County of Denver; also, the Ft. Collins High.

Q. That is Bedford limestone?

A. Yes, sir.

Q. There are a number of firms shipping Bedford limestone?

A. Yes, sir.

Q. What company are you receiving it from?

A. William McMillan & Son.

Q. Those are the people you received the telegram from?

A. They are.

Q. In the circular letter you speak of, was the William McMillan stone mentioned as unfair?

A. No, but there was no names mentioned.

Q. No names mentioned?

A. No. Probably Judge Bell would like to see a copy of the circular letter issued by the locals, or the general union.

Q. When did you commence operations on this building?

A. May.

Q. This year?

A. The actual work started—my contract was signed in February.

Q. Of this year?

A. Yes, sir.

Q. When did you order your stone?

A. In February.

Q. You have used stone from this stone before?

A. Yes.

Q. Have you had any trouble?

A. Never did.

136 Q. Did you know of any contemplated trouble at the time you ordered this stone?

A. No, I did not.

Q. Did you know it was unfair at that time?

A. We could not discriminate between fair and unfair.

Q. What do you mean by that?

A. Well, because we are not supposed to know—we can buy material where we want it in the open market.

Q. At the time you purchased this stone, did you know there was liable to be trouble regarding the use of it?

A. I did not.

Q. You had no intimation of that?

A. None.

Q. When did you first get that information?

A. Oh, I have been hearing of some trouble about buying stone from unfair and fair, unfair firms, but the question was to find out who was fair and unfair.

Q. Did you know who was fair and who was unfair?

A. No, I did not.

Q. Did you have any means of finding out—did the Union ever give you a list of fair and unfair stone?

A. They have, at one time.

Q. How long ago?

A. Oh, about a year ago I think.

Q. Was McMillan one of the unfair ones on that list?

A. There was no name mentioned; they just give us the fair firms.

Q. Wasn't McMillan's name on the list?

A. No, sir.

Q. You did not order your stone, then, from one of the names mentioned on the fair list?

A. No, because I felt like I wasn't going to be told by a local to buy my stone where they thought I ought to buy it.

Q. How many firms were on the fair list?

A. I think there was four or five at least.

Q. How many firms are putting out Bedford stone?

A. Oh, there must be between two and three hundred I would say, between one hundred and three hundred, at least; I couldn't say exactly.

Q. And there were only four or five names on the fair list?

A. Uh-huh.

Q. You, personally, have had no difficulty with the Union?

A. No.

137 Q. There is no trouble between you and the Union regarding any, affecting your conditions of work here?

A. No, sir.

Q. Now, what work is it that the men refuse to do on this stone?

A. They refused to cut it.

Q. Do you have any difficulty in getting it set?

A. No; I don't have to do the setting; that is an outside contract.

Q. What do you have?

A. Just the cutting of it, hand-cutting and trimming.

Q. You have that under a contractor?

A. Yes.

Q. That is the only contract you have?

A. Yes, sir.

Q. What hand-cutting is there to be done on the stone?

A. Truing corners and fitting.

Q. Is fitting done on the job?

A. The fitting is done on the job—that is, in a case where—you see, you get a length of cornice probably a hundred feet; the fitting would be that this one hundred feet is probably divided into twenty-five pieces, it is probably the last piece—the last piece will probably be a little too long; that would be the thing, to cut that down.

Q. The setter doesn't do that?

A. No, sir.

Q. Is that a different union, the setting union from the cutting union?

A. I can't say; that is done by the bricklayers' union.

Mr. Graham: I would like to ask if he had inquired at our general headquarters where the men were out and where they had refused to go out, as well as asking the other side.

The Witness: I felt that if I did ask a question they would never tell me anything.

By Chairman Reilly:

Q. You never asked them?

A. No, I never asked them. I have only taken it from the general conditions here and outside, the reports I have got—but, you have got the report there yourself.

Chairman Reilly: Is there anything else, now?

Mr. Graham: I think it is exaggerated a little bit when you say there was 300 firms.

The Witness: I says from one hundred to 300 firms, I

can't tell you the exact list; it is impossible for me to—it wasn't of interest to me.

138 B. F. JAMES, having been first duly sworn according to law, on oath testified as follows:

By Chairman Reilly:

Q. State your name?

A. B. F. James.

Q. What is your address?

A. Wellington Hotel?

Q. You are an officer of the Union?

A. I have been acting, one of the acting officers for the last month.

Q. Now, how long have you been working on this particular job here in Denver, or Ft. Collins?

A. I have been on the Denver job since the 15th of June.

Q. Did you work on the Ft. Collins job?

A. Yes, sir, I was there about two months.

Q. And that is the same kind of stone?

A. Yes, sir.

Q. Comes from the same place?

A. Yes, sir.

Q. Now, just go ahead and tell us what you know about this from the Union's viewpoint?

A. As I understand it, we have what we call unfair firms in the stone belts in Indiana. We have been trying for three years through the international organization to come to an agreement with them, whereby they would employ members of our organization on their machines, and they have promised from time to time in a meeting with our executive board, and every time we try for that meeting they refuse to have a meeting, and we also issued orders two years ago to cut this stone pending this agreement. We have never gotten an agreement with them; they refuse to meet with us, and at the 1921 Convention we decided to go ahead and cut this stuff, but it was understood that we were to come off of it when we were called off, but there was no date set when this call was to be made; it was generally supposed it would be the first of May of this year, but it wasn't. Our executive board met in Indianapolis in June and decided on August when we was to come off of this work.

Q. When did they notify you?

A. We wasn't notified until about two days—that is, officially notified, until about two days previous to the first.

There was a letter sent from the general office previous
139 to that, but in some way those clerk or stenographers in the office didn't put this notice in the office. The envelope come to the secretary here and he sent it back, and it didn't get back until about two days before the first of the month.

Q. Did your union set on these instructions?

A. We did not until the first. Our regular meeting night was the first day of the month.

Q. And they took action at that meeting?

A. That night.

Q. And their action was for the men to come off of that job?

Mr. Frank James: I object to that. I was at that meeting and there was absolutely no action taken. The local took no action. This order come from headquarters. The local has no authority in the matter; it couldn't take no action.

By Commissioner Bell:

Q. They discussed it at that meeting?

A. It was discussed.

Q. You read the letter and discussed it?

A. Yes, sir.

Q. Now, Mr. James, you are back on the job at this time?

A. Yes, sir.

Q. You are back there through an order from the Commission after a wire from your international organization. Now, did the Union decide to ask the Commission to hear this case and determine it?

A. Yes, sir.

Q. And you were instructed, as secretary, to so notify the Commission that you wished an early hearing?

A. I was.

Q. There is no difference between the Union, or no feeling, I will say, between the Union and the employer?

A. None whatever.

Q. Now, has the Union discussed as to what this employer could do in order to make this job fair with the material he has on hand?

A. No, the local has not discussed that.

Q. What would be necessary, in your opinion, for this employer to do in order to go on with this work?

A. Well, I don't know that there would be anything nec-

essary on his part; about the only thing he could do would be to use his influence with the McMillan people and try to persuade them to employ members of our organization.

Q. Has he considerable material on hand at this time?

140 A. I think so.

Q. Do you suppose if he would buy his material in the future from another firm, that the Union would then go on with this work?

A. I don't think so.

Q. So the man is right up against it. The only thing he could do, according to the orders of the Union, is to just quit work, quit on the job, give it up?

Commissioner Annear (Interposing): Or hire non-union men.

By Chairman Reilly:

Q. You mean as far as the Union is concerned?

A. Well, he could stop work on it pending this decision. We may have this settled through our international most any time.

Q. The Union has not endeavor in any way to ascertain as to what kind of a contract he has, whether or not he would lose financially by discontinuing the work?

A. No.

Q. Do you know of your own knowledge whether members of your organization are out in other states?

A. Yes, sir.

Q. Have your people that information?

A. Yes, sir.

Q. Could you name some of the states where they have refused to work on account of this stone?

A. They refused to work on it at Battle Creek, Michigan; Muncie, Indiana; Indianapolis, Indiana; Chicago, Illinois; Tulsa, Oklahoma; Cleveland, Ohio. Them is the places I have information from.

Q. Did you get that information through your journal?

A. No, sir, through personal correspondence with our International Secretary.

Q. Did you get any further information in regard to what they are doing on those jobs; are they just discontinuing them?

A. Discontinue work and all the men left town.

Q. Do you know whether or not they are attempting to go ahead with non-union labor on those jobs?

A. I didn't hear that, no.

Q. How many men are working on this school at the present time?

A. At the present time?

Q. Yes?

141 A. There is three.

Q. Just you three men here?

A. Us three right here.

By Commissioner Annear:

Q. I just want to ask if he knows of any jobs where men refused to go out at the request of the International Secretary?

A. I heard of one in Chicago, that one man refused to go out. That is the only place I have heard from.

Q. Mr. McMillan's telegram says this is about the only place where they went out?

A. That is quite possible. This may be the only job McMillan was shipping on anywhere in the country at the present time.

Q. Is this stone that McMillan gets out, is that planed by organized labor?

A. They have an organization. It is not recognized by our International. It is a local organization.

Q. You would not object to using stone if it was planed by organized labor, would you?

A. If that organization was not recognized by our organization, I would, yes, sir.

Q. What do they have to do to be recognized by your organization?

A. They have to join our organization, pay regular initiation fees.

By Commissioner Bell:

Q. Then, this matter is a fight between your organization and some other organization?

A. It is between our organization and the Cut Stone Contractors' Association, what they call the Bedford stone cutters.

Q. Is that a union?

A. Well, it is an organization of employers.

Q. Aren't the men that work for the organization—they are the ones that have this local organization?

A. Yes, sir.

Q. Then, it is a fight between your organization and this local employees' organization?

A. No, sir, it is a fight between the stone cutters and the Bedford Stone Club, the bosses.

Q. As to whether the contractors or employers are members of your organization or some other organization?

A. Yes, sir.

142 Q. In other words, it is an effort of your organization to kill the local organization?

A. Yes, sir.

Q. In order to do that, you would force a man in Denver, with whom you had no trouble, to either go busted or quit employing union men?

A. Well, that has been threshed out here before. It is generally understood we have nothing against this local man at all. We are only acting under orders from our International.

Q. He would either have to go broke on his contract or employ non-union men?

A. Yes, sir.

Q. And there is no way he can fix it up with you, locally?

A. No, sir; the local has no jurisdiction.

Q. Your committee met in June and decided to call this strike, you say?

A. I think it was June.

Q. Was he given notice of that?

A. This employer, I don't know.

Q. Was he given any notice prior to the time you walked out?

A. He was given notice at the same time we got it.

Q. When was that?

A. Just a couple of days before the first of August.

Q. He had no chance, then, whatever, of changing his conditions?

A. Not at the time, no, sir.

Q. This order did not make any allowance for stone ordered prior to a certain date or after a certain date?

A. No, sir.

Q. In other words, it affected only the local man?

A. It affected the local man. We was trying to affect the Bedford people through the local man.

Q. That is, bust him up in business and make the Bedford man feel sorry about it?

A. Not necessarily. I don't think the Bedford man would let him do that. I think the Bedford man would come to his rescue before he went busted.

Mr. Fernald: I don't think he would come to my rescue, financially, as far as that is concerned.

The Witness: Not financially, but I believe if it come to a show-down they would see that you was furnished men to finish that work.

143 Mr. Fernald: I don't believe they would. We buy material on a contract price.

Commissioner Bell: If he has a contract with McMillan, you understand he has to go through with it?

A. Yes, sir.

Q. If he has a contract with your Union he would have to go through with it?

A. Yes, sir.

Q. So the only thing he can do is to get non-union men?

A. Yes, sir.

Q. What influence would that have on McMillan from the Union's standpoint?

A. I don't suppose that would have any on McMillan.

Q. So the only person injured would be your own local man, who is your employer, and your personal friend, is that it?

A. In a way. If it was finished that way, he would be the only one hurt. We are not fighting on this Denver man. We are trying to force these people through the other subcontractors all over the country.

Q. If you did not make in your International order a fixed time in the purchase of this stone, for the calling of this strike, it affects only the local man?

A. No, I think that would affect the Bedford man too.

Q. How?

A. Well, if he could not get that stone out in a certain length of time with the employees he has now, he would naturally come to us for men, wouldn't he?

Q. But he can't get them?

A. Yes, he can get them from us.

Q. Who?

A. The employer in Bedford, the McMillan people.

Q. His men are not called out, are they?

A. I say if the local contractors all over the country push them for stone, to get it out in a certain length of time, they could come to us and get men.

Q. I don't get that?

A. If they come to our agreement and agreed to pay our

scale and put union men on those machines, we would work for them.

Q. If you stopped the work here, he isn't going to get stones so fast, is he? Then, he will slow up operations at McMillan's, instead of hurrying it up?

A. Yes.

144 Q. Then why would McMillan hire more men?

A. I thought you was speaking of getting this work out in a certain length of time.

Q. I certainly don't get you. I guess you don't get me. Here is the proposition, I want to convey to you the impression you now leave with me is this, that your strike injures only your local man, and he is your friend?

A. As far as this particular job is concerned, yes.

Q. That is, the job he has?

A. Yes.

Q. And the only one he has, isn't it?

A. Outside of the one at Ft. Collins.

Q. Same stone?

A. Same stone.

Q. Same conditions?

A. Yes, sir.

Q. This is the only job he has, that is so?

A. Yes.

Q. And you are going to stop work on that and you only injure him, is that correct?

A. I expect that is correct, yes.

Q. And that is the impression you want to leave with me?

A. It is like I said before, we are centering the fight against the Bedford people, and of course we are not working for them, personally. We can't go on the side against them, we can't walk out of their shop because there is none of our men in their shop.

Q. If Reilly hated you and went out and licked me, it would be a kind of a moral lesson to you, is that it; in other words, if there is any explanation of that situation from your standpoint, I want it?

A. That is all.

Q. And you are willing to leave that impression stand that way with me?

A. Yes, sir.

Q. If there is any explanation of that, I want it?

A. Well, I don't know of any further explanation that I can make.

Commissioner Bell: That is all.

By Commissioner Annear:

Q. Your organization is called the International?

A. Yes, sir.

Q. You are trying to force the Bedford to employ members of your union to do this work?

145 A. Yes, sir.

Q. An irrespective of who it hurts, that is the object?

A. That is the object. It is done from our headquarters.

Q. Mr. Fernald, or anybody else, they have got to get out of the road, that is the object?

A. We are trying to gain this point, irrespective of who it hurts.

By Chairman Reilly:

Q. To sum this up, Mr. James, here is the point, your people are members of this local union. The local union, of course, is under the jurisdiction of the International Union, and you have your orders from your International Union?

A. Yes, sir.

Q. And you people have no choice in the matter, you are just complying with the orders from the International?

A. We have no choice whatever.

Q. Probably, if it was let up to you people here, knowing this employer as you do, why, your organization here, local organization would not strike on this man?

A. I don't believe we would, no.

Q. But you have got to follow the orders of your International organization?

A. Yes, sir.

By Commissioner Bell:

Q. How many members are there of your local union?

A. Only six on this job; twenty or twenty-five working in other yards in town.

By Chairman Reilly:

Q. Now, don't you feel that it is the duty of the members of this local union to do everything within your power to complete this work, for the reason that you have an employer that is absolutely fair to you, and the employer, as you stated, has not had the proper opportunity to buy stone from people that are fair, when there are only four, as you stated, on the list, where there is probably a hundred of these contractors?

A. I believe in doing that, helping him out, if we can do it without conflicting with orders from headquarters.

JOHN GRAHAM, having been first duly sworn according to law, on oath testified as follows:

By Chairman Reilly:

Q. State your name and address, Mr. Graham?

A. John Graham, 117 Fox.

146 You are a member of the stone cutters' union?

A. Yes, sir.

Q. How long have you been a member of this union?

A. About twenty-five years.

Q. Have you been in Denver most of the time?

A. Nineteen years, off and on.

Q. Go ahead and make your statement?

A. I just wanted to explain that statement of Mr. Fernald's about the president stopping men going to work—I don't know of any man but one, and that was Mr. Lindsey. Mr. Lindsey was never employed on this job before, but him going there and going to work, why men working under an order of the Commission would look to me like he was doing something wrong; that was the only matter that I knew of, he would be doing wrong if he went on the job; I don't know that he told him that.

Q. You were working on the job?

A. Yes, sir.

Q. No, why didn't you go back?

A. I was taking a vacation.

Q. With permission from the employer?

A. He didn't give me permission, I did not ask it.

Q. Is that customary, to take a vacation without saying anything to your employer?

A. It is in our business, yes.

Q. You take a vacation whenever you want it?

A. Yes, and if he doesn't like it he can order you to continue that vacation if he so desires, and I cannot force him to put me back to work.

Q. Does the employer have any call on the members of the Union whatever, only just to pay them the scale if they wish to work; can he demand of the Union to furnish him employees?

A. Oh, yes, it is up to us to furnish him with men, that is customary.

Q. You did not agree with this order—that is a fact, isn't it, Mr. Graham?

A. I never disagreed with it. I never objected to any men working there.

Q. Wouldn't you have been working as a matter of fact, if there wasn't any disagreement out there?

A. I don't know whether I would or not. I could have been working other places.

147 Q. But you didn't go to work any place else?

A. No, sir.

Q. Now, have you any solution of this matter?

A. I have.

Q. What would be your solution?

A. At our last regular meeting when this was—there was a motion passed to notify the Commission, and I also mentioned the fact that after this was done and the Commission dismissed the case, that we immediately hold a special meeting of our own in the local, but nobody seemed to take any notice of it, and I cannot do the thing myself, but that is my opinion, to hold a special meeting and explain the nature of this job to our executive officers as I see it, and as other members here see it; and our executive board member knows that we had an awful time to get stone used in these schools here. We finally succeeded in getting stone used in several of the jobs, and I don't believe there is anybody that has worked harder for the advancement of the public schools than organized labor, and it would not be any more than right to try in that way to relieve this job and go ahead with it.

(Colloquy)

Commissioner Bell: The Union, under instructions from International headquarters, requests the Commission to postpone the further hearing of this matter until Saturday morning, August 30th, 1924, at ten o'clock A. M., the request being concurred in by Mr. Fernald, the employer, and the continuance is granted until said time.

State of Colorado,
City and County of Denver. } ss.

I, C. A. TAYLOR, being duly sworn upon oath say that my name is C. A. Taylor; that I reside at Denver, in the State of Colorado; that I am by profession a stenographic reporter; that I was employed by The Industrial Commission of the State of Colorado to take down in shorthand and transcribe in typewriting the testimony of the witnesses given before the

Commission on the 26th day of August, A. D. 1924, in a certain cause entitled In the Matter of Journeymen Stone Cutters Association of North America, Denver Local, v. Fernald & Walton. That I took down in shorthand the testimony of the witnesses, and transcribed the same in typewriting, and that the attached sheets, Pages 1 to 21, both inclusive, are
148 a full, true and complete transcript of my notes of the testimony of the witnesses in said proceeding.

Dated at Denver, Colorado, this 4th day of October, A. D. 1924.

C. A. TAYLOR.

Subscribed and sworn to before me this 4th day of October, A. D. 1924.

My Commission expires July 28, 1926.

WM. R. SHAW,
Notary Public.

(Notarial Seal)

Denver, Colorado, August 30, 1924.

The further hearing in this cause was reconvened at the hour of ten o'clock A. M., on the 30th day of August, A. D. 1924, at the State Office Building, Denver, Colorado, pursuant to continuance had as previously noted.

Appearances:

For the Commission, Hon. William I. Reilly, Chairman;

Hon. Joseph C. Bell, Commissioner.

For the Employers, W. W. Drayer, President, International Cut Stone Contractors and Quarrymen's Association, Incorporated.

For the Employees, Michael W. Mitchell, President, Journeymen Stone Cutters' Association of North America.

And thereupon the following proceedings were had, to wit:

MICHAEL W. MITCHELL, being first duly sworn, upon his oath testified as follows:

Direct Examination.

By Chairman Reilly:

Q. Please state your name?

A. Michael William Mitchell.

Q. What position do you occupy?
A. President of the Journeymen Stone Cutters Union of North America.
Q. Where are your headquarters?
A. Indianapolis, Indiana.
Q. How long have you been president?
149 A. Since October, 1921.
Q. Who was the president before you?
A. The president I followed was Arthur A. Dougherty.
Q. Mr. Mitchell, you can go ahead, if you will, and make a statement in regard to this present difference, and after that the Commission will want to ask some questions?
A. Must I speak in my own way why this order was issued? To get back to why the order was issued, I would have to go back to 1921; I will try and make it as brief as possible. Along back in 1921 was the Convention of the Journeymen Stone Cutters' Association held in New York City; during that session there was legislation brought up that the employer was to eliminate the air hammer; there was established at that Convention the question of giving the employer the two hours overtime proposition; he could work ten hours a day provided time and a half was paid for over eight hours, or he could use his men in three different shifts, working them twenty-four hours, if he so pleased. During that convention Mr. Drayer, present here, and Mr. Gillie, appeared for the stone contractors and at that time asked the New York delegates, or the officers representing the stone cutters at that time, for the elimination of the machine men, or insisting that they make an agreement only covering stone cutters and carvers. I was not present when Mr. Drayer appeared, but that is the way it was reported to the convention. I heard afterwards that they said that was not mandatory on the stone cutters, but the way it was conveyed to the convention was that they would only make an agreement with stone cutters and carvers. That was not given consideration or it was not passed by that convention. I do not believe there was any matter of compulsion, but it was rejected anyhow. After the convention and the law passed to go into effect May 1, 1921, the split came between our officers and the cut stone contractors, at least they did not renew the agreement. I have been told, and I believe the men in the meeting will verify it, that our officers tried to negotiate the international agreement, asking some thirty days stay at the meeting in April of the officers of our association. They refused to concede the thirty

days and seemed to be very anxious to go to bat, as the term is, or a strike on the first of May. On the first of May, 1921, our men were out in most all the shops and in quite a few cities. That condition prevailed along until October when I came on, and hence I can only speak from that time on a
150 taking as active participation in the affairs of our association. Just as I came on they were enjoining our association and were endeavoring to get a temporary injunction against the organization; that was about the tenth of October, 1921; that injunction covered the Shea & Donnelly Company, of Bedford, Indiana. I believe some twenty-six other firms prayed for the injunction but only one was sustained. Then it came along until the spring of 1922, early in January. Our business agent in January, 1922, at Cleveland, called me by long distance phone and wanted to know if I would appear before the convention of the cut stone contractors at Cleveland, Ohio; I said, "Yes" over the phone, that I would be pleased to come. He said he had been speaking to Mr. Drayer and he said if I had anything to submit I would be given a hearing. I went to Cleveland and met Mr. Drayer, he introduced me to Mr. Dickinson, whom I had met before, and I talked this matter over; they told me I would not be given a hearing before the convention of employers, but I would be given a hearing before their executive committee, which would meet just after the convention was over. I said, "Very well." I did appear before that committee, I was prepared and went before the committee. Mr. Drayer brought me in and introduced me to the cut stone contractors, some of whom I knew. I spoke of the division between the two associations and that I believed it was to the best interest of all concerned that an international agreement be drawn up. I spoke along those lines about half an hour, I presume, and when I finished, Mr. Dickinson, the executive chairman, informed me that we would have to call a convention of our organization and revise our constitution to conform to an international agreement. I told him that was almost impossible and I could not consider it. Then Mr. Fanning, I believe president at that time, said he thought if we would revise our constitution to agree, that would be all right. His suggestion carried and I was told to submit a constitution to Mr. Drayer. Along about January 3, 1922, I brought my constitution over to Mr. Drayer, I have known him for a number of years, and sat down and talked and I said, "I want you to mark our laws that conflict." He kept the constitution until

about February 6th; then Mr. Drayer called me on the phone and said, "I would like for you to come over a while and talk over the constitution." I came over and he pointed out where he had left pencil marks on each law, he told me what he thought their objection would be. I do not remember
151 just now, I have no copy with me, how many he pointed out, but I would say along between twelve and fifteen laws, the air hammer question, the machine question and different other questions were involved. I told Mr. Drayer I would submit that to our executive board, and that I would submit it to a referendum of the country, and Mr. Drayer is very familiar with all that, as he was a general secretary for six or eight years, from 1912 to 1919, I believe.

Mr. Drayer: 1918—no, February 1, 1919.

Mr. Mitchell (Continuing): He was familiar with the constitution, anyway. I went back to my office and wrote up just what I thought Mr. Drayer's objection was. I say Mr. Drayer's objection, he takes a little exception to this, or he did later on, he claimed it is the contractors' objections and not his and he might make is the contractors' objections, but he took exception and said they were not his, but in the light of our membership I referred to it as Mr. Drayer's objections as he was the man that pointed them out, and I would have expected him, if I had pointed out objections to his laws, that he would have said they were Mitchell's, and I wanted a fair vote from our organization on the question. I sent a letter to our locals to obtain a local vote on the changes, and the result was something about eleven to one against accepting them. Then I had nothing else to do but to go along the best I could with the officers of the organizaion until along about, I believe it was, October, 1922. At that time there was a job tied up in St. Louis with similar conditions to the one that exists in Denver at this time. Our St. Louis men refused to cut stone coming from the Indiana district prepared by men working in opposition to our organization. When this was brought to my attention, I happened to be in Bloomington, Indiana, and Mr. Drayer wired me that if I wanted to avoid serious comilpeations it was to my best interest to come to St. Louis and meet him there. I might state he also put in that telegram mention that me and him had met some days prior to that and I spoke to him on a get-together proposition, and that it would be to the best interest of all concerned to eliminate the spirit of antagonism and get together on an international agreement. In this telegram he sent me he

mentioned that in the same words—I forgot the way he worded it, but he said—"To carry out the spirit of the conversation we had some two weeks or ten days ago, it would be to the best interests to appear in St. Louis." I wired
152 Mr. Drayer at Chicago, I believe at the LaSalle Hotel, that I would meet him in St. Louis, and I went to St. Louis and took it up with the St. Louis local men and they appointed a committee to meet Mr. Drayer and Mr. Leeter, the man's job that was in question at the time. We met at the Jefferson Hotel and I presume it last from ten o'clock in the morning to about five in the afternoon; of course, we had lunch between times, but quite a lot of conversation over the question. The final determination was, and it was proposed to Mr. Drayer, that we would release the job under this condition, provided that he would get us a joint board meeting between his board and our board. We were ready and willing to negotiate on the air hammer question, on the machine question and on the penalizing of men returning to work, not mentioning any of the rest of the points that had been pointed out or that had been rejected by our organization, but I mention those three that seemed to be the cardinal points that had caused the split. Mr. Drayer, while he did not say there would be a meeting, said he would do all in his power to get a meeting. I went back to the local and succeeded in getting the local to release the job. We told Mr. Drayer at that time that if we did not get notice that this board meting would be held in two weeks' time, we would not be responsible for the action our men might take on this question. We got no board meeting and our men took no further action, but nevertheless we were somewhat disappointed at not getting a board-meeting. This went along until along in April, 1923. I had made a local agreement covering Cleveland and another point on the 1921 trouble and they were back into the fold of the general organization again, and the question came up on these parties coming into their locality and those employers got indignant and said their local agreement would be violated. I went to Cleveland and met those employers and tried to show them that this was a local agreement, it was not an international agreement and did not exist outside of the locals they were working in; after some talk they seemed to understand, and while they did not like it, it was not to their liking, they seemed to understand it. They asked would I meet M. Walter, one of the governors of the Indiana district, and I think

has an interest in the Cleveland company, and I went to see him, and he said he was not in position to do anything for us. I spoke to him about a board meeting about the time Mr. Drayer had promised or said he would do all he could for us, but I think his board wanted us to waive in writing what
153 we was willing to submit. No organization under the sun would waive their rights in writing, they ought to be men enough to stand up or sit across the table and bargain for the agreement like men, and not be curs and waive the men's rights in writing, giving the organization no chance to voice its sentiment. They were not men enough to accept the condition but insisted on waiving the rights of our men in writing. Mr. Walters said he was not one of the board members that demanded that, and I said, "Very well." We talked it over and he said, "Take it up with Mr. Fanning." I went with him to Chicago and I believe I saw Mr. Drayer, but I know I saw Mr. Fanning. He advised me to take the matter up with Mr. Drayer, he was then in Indianapolis, his headquarters, and have a copy of my letter submitted to Mr. Drayer and also submitted to him. This I did, and it brought about as a result that we had a board meeting June 11th in Buffalo. Mr. Drayer's letter set it for June 4th but we had some business on at that time at Washington and could not possibly get there, and I asked Mr. Drayer for a date later, June 11th, and he wrote back it would be all right, that was accepted by the employers. So we met on June 11th at the Statler Hotel in Buffalo. I might say the first day we went over the proposition of an international agrement; we talked on the questions involving the two parties and what it meant to the organization and to the employers. We then submitted a tentative agreement to the employers. The employers, Mr. Fanning was the executive chairman of that board meeting, stated that this was rather a surprise and that they would have to take the tentative agreement up and go over it before they could have any talk upon it; anyhow, it revolved itself into a general question of what the stone cutters would do. It was a very friendly meeting and all seemed to agree and things went along very nicely. After adjournment to meet the next morning, the representatives mingled and had quite a sociable time, and we felt a good result would come out of the meeting. The next morning we returned at the appointed time, ten o'clock, and the employers were in session, and we were asked to retire for a little while to the lobby. We retired to the lobby and remained until about eleven o'clock in the morning, just

about an hour, and I believe that Mr. Adair said to come on up. We did and they were all very quiet, a very serious lot of men, not a smile to be seen on any of them, and they told us they had decided that we would now have to take the
154 changes as offered by Mr. Drayer to our convention, that it was not very long off, and if the convention at Cleveland would conform, or somewhere closely conform, to those changes, they would be willing to meet us after our Cleveland convention. We went and I want to state that we done everything we could to try to meet the conditions of the employers in revising our constitution. We appointed four committees to go over the different laws that had been suggested and to bring in recommendations to the convention. Those four committees went out and labored on those questions, came in and dissolved and went into a committee of the whole. The first four days of the entire convention was taken up on that question of an international agreement. Before the convention closed a resolution was passed by the convention that the incoming officers of the organization should do everything in their power to try and bring about a settlement of the question between the cut stone contractors and our association, and if they were not successful in bringing about an international agreement, then the laws in the constitution would be rigidly enforced, the law that forbid our men working on stone started by other than our own employees, those laws must be rigidly enforced. The incoming officers were to take up and try to get an understanding with the cut stone employers. I took this matter up after the convention with Mr. Drayer, and I believe he was to communicate with the rest of his entire board, and sometime later I received a communication from Mr. Drayer stating that it was near the time for their convention at Montreal, June 24th, and they would take it before their convention. I might not have the words correct, but that was the meaning of it, and after whatever was done there, I would be officially notified. After their convention we received no communication for some time. Now, I might say that Mr. Drayer informed me later that they had moved their offices from Indianapolis to Danville, Illinois, and then moved from Danville to Chicago, but I believe while at Danville I received a communication from Mr. Drayer, but I do not just remember what it contained. Later I wanted to know more about what their convention had done relative to meeting us, and I think the next communication I had with Mr. Drayer, I received a communication stating that him and

Mr. Fanning wanted to see me in Chicago. I went to Chicago to meet them and met Mr. Drayer in his office in Chicago, and we had to wait until afternoon as Mr. Fanning was very
155 busy and could not get there until afternoon. We sat around and talked, not on our mission there, but on other matters, and when Mr. Fanning came we took up the mission I had come to Chicago on, and they explained—they would not say outright as to the conditions lately in Indiana, but I believe that is what the meeting conveyed to me—both Mr. Drayer and Mr. Fanning stated in my presence at that time that they would like to see an international agreement, would like to see the whole thing settled, but there was other elements that entered into it. I asked if it was not the Indiana question, and he said I might take it up with Mr. Mishner, the Governor of the stone cutters in Indiana, and I do not know whether he has an interest, but he is vice-president of the firm and I presume he has, and I had quite a talk of an hour and a half with Mr. Mishner. He stated that while everything was going along very nicely and he thought a more friendly feeling existed, he thought it would be best to continue along that line, as if we took any other stand it might widen the breach. I made it clear to Mr. Mishner that it did not make any difference how friendly I feel, the men would not tolerate a condition that they find in the Indiana district, and why would not the same apply to men outside? The rest of the men in the organization would not stand for this condition. So it came to a point where the order had to be issued. I want you to understand that the order is not against Indiana stone, or dictating to any employer where he shall buy stone or from whom he shall buy it; he can buy it from who he pleases, where he pleases and any time he pleases, but we do say that our men will not finish it if it is started by men working in opposition to us. If we are not good enough to start it, we are not good enough to finish it. If they start it, let them finish it. That is all we have to say in this matter and that is why the order has been issued.

Q. His order was issued the first of May?

A. No, the supposition was it would be the first of May.

Q. And then it was issued in August?

A. August first.

Q. What is the condition at the present time throughout the country in regard to this order?

A. Our men are living up to this order; if they are not

living up to this order I want the places pointed out and I will see that they do.

Q. So far as you know they are living up to this order?

A. So far as I know.

156 Q. Do you know of any places where they are not?

A. Not to my knowledge, Mr. Chairman.

Chairman Reilly: That is all.

WALTER W. DRAYER, being first duly sworn, upon his oath testified as follows:

Direct Examination.

By Chairman Reilly:

Q. Please state your name?

A. Walter W. Drayer.

Q. What is your position?

A. President International Cut Stone Contractors and Quarrymen's Association.

Q. Where are your headquarters?

A. Chicago.

Q. How long have you been in that position?

A. Since January, 1920; previous to that I was secretary a year.

Q. Who was in this position prior to that time?

A. A. E. Dickinson, of Bedford, Indiana.

Q. Go ahead and make your statement.

A. Now, gentlemen, Mr. Mitchell has stated substantially the developments that have taken place in reference to this dispute that exists between the stone cutters and the contractors, however, I wish in my remarks to take a few exceptions to what he has said. I want to go back first prior to the New York meeting, in January, 1921, and say that in 1913 there existed a condition much similar or even more aggravated than the condition that exists today. In 1913 there was what was termed by the Journeymen Stone Cutters' Association of North America a duel union international in scope, composed I would say of several different localities, just how many I cannot say, may be twelve or fourteen. It was a source of annoyance in the cut stone industry, and on petition of the officers of the Journeymen Stone Cutters' Association, the cut stone contractors met a committee of the stone cutters' association with the idea, if possible, of coming

to some understanding and eradicating this friction that existed. That was held June 3rd in the City of New York, and an international agreement was drawn up. This agreement, among other things, provided for the annullment or ab-
157 sorption into the general union of this dual union element; it provided further for a closed shop through the entire jurisdiction of the International Cut Stone Contractors and Quarrymen's Association, made for five years and carried out for five years. In this agreement certain fundamental principles were inserted, for instance, one was the arbitration of disputes; another was that they would waive jurisdiction over foremanships and over machines and tools. That agreement was carried out for five years, expiring June 30th—on May 31, 1918. In 1918 the committees met and this agreement was satisfied and extended for another three years. Along in the fall of 1920 rumor reached the contractors, in fact, they had evidence of it for a year or more before, that there was to be a determined effort on the part of the Journeymen Stone Cutters' Association to abolish the air tool in the stone industry; a further rumor that they proposed to put machines on an eight hour basis; further, they proposed in the future there would be no division between stone cutters and planermen, and eventually both would be one and the same, the stone cutters would operate the machines. The contractors had every desire to renew that agreement, every desire to keep peace with labor and to do that they felt it might be advisable to send a committee to the New York convention and present those things which the contractors thought were necessary if this great industry was to develop, progress and go along. I might say the contractors were much concerned about these rumors, about the restriction on machines, particularly the air tools and the elimination of the classification that existed between planermen and stone cutters. The result was we went to New York, I was one of the committee. When we got to New York we determined that it might be advisable to take it up with the Executive Committee rather than go before the Convention. We asked for a meeting with executive committee and were accorded that meeting, the entire board met with us. We told them we were in the identical position of a labor union that desired to better their condition and asked something of the employers. We believed certain things were necessary and come to present our ideas to the convention and sit down and discuss those matters with them. Mr. Mitchell stated at that New

York Convention, at least I gather this from his remark, that we come determined to make an agreement with stone cutters and carvers only. At this time, gentlemen, and at the expiration of this agreement, the Union by the agreement with 158 employers, particularly in the Indiana district, which is the bone of contention, had not only the planermen but the diamond sawyers in the constitution. Here are the conditions we presented:

1st. The employment of General Union stone cutters for hand cutting; eight hours per day, forty-four hours per week at wages such as different local conditions may warrant.

2nd. The employment of planermen of the class now employed without restriction as to the working hours at wages not to exceed 80% of the rate per hour of wages paid stone cutters in the same locality.

3rd. In the employment of all other labor necessary in the conduct of the stone industry same shall receive such rate of wages and working conditions as local industrial conditions warrant.

4th. Foremen shall without qualification be recognized as the representatives of the employers.

5th. Apprentices: Through neglect there is at this time an acute shortage of skilled labor in the various trades in our industry and it is therefore our purpose to rehabilitate the supply of this class of labor by the unrestricted employment of apprentices.

6th. Air Hammer: We insist on the unrestricted use of the air in all localities.

7th. There shall be unrestricted use of machinery and appliances in the stone industry.

Those are the conditions we submitted to the Executive Committee and told them it was not an ultimatum but it was conditions we thought worthy of discussion for the elevation of the industry and for the fundamental principles of an agreement. We told them further that we were going to hold our convention in Chicago simultaneously with their convention, we were leaving that night, and it would please us very much if they would wire us and advise us if their committee was prepared to meet us, and if so we would come to New York and sit down and attempt to negotiate an agreement. The journeymen stone cutters held their convention and we heard nothing from them; a few weeks after the convention adjourned we heard rumors of the elimination of the air tools, the eight-hour day on machines; the union had deter-

mined that the planermen, diamond sawyers, blacksmiths and tool grinders should be members. No apprentices would be permitted to learn planing or stone cutting, he had to learn the industry in all its branches. About February 16th, 159 as I remember it, I called Mr. Dougherty on the phone and asked if he did not think it was but courtesy that he should give the employers some reply to our first solicitation in New York. He replied over the phone that our proposition had been submitted to the convention and had been turned over to the incoming officers to meet with the cut stone contractors. I said, "That is all right, but don't you think it is getting near to May first and we should have a meeting?" He said, "We will be glad at any time." I said, "All right, we will arrange the meeting." He called me back in a few minutes and wanted to know if I could supply him with a copy of the document I had furnished at New York, as they did not have a copy of it, although I gave them a copy; I said I would gladly supply him, and I again asked for a meeting and he said, "We will be glad to meet with you at any time." I said, "It is good business procedure to notify me by letter that you are willing to meet us"; the next day the letter came in; immediately on receipt of that letter I set the date as March 4th, a date when we would call our board of governors in Indiana for their convenience as well as our own and notified them immediately of this meeting and advised them, since he had informed me he would be glad to meet at any time, and I was satisfied the date was convenient and ample notice, and we would expect them on March 4th. March 4th came and our board met; Mr. Dougherty did not show up. During the course of the meeting Mr. Blasey was on the wire, he wanted me to kindly offer excuses to the board of governors for Mr. Dougherty's absence, and to further say that he had no reason or explanation why he was absent. I told Mr. Blasey. I told Mr. Blasey if he had any excuse to offer the best way was for him to come in person and present his excuse. Mr. Blasey complied, he came over and presented them, he said he had no idea why Mr. Dougherty had not shown up, he had no excuse to offer. He was satisfied Mr. Dougherty had been amply informed of the meeting, and said he was very sorry the contractors had called the meeting and Mr. Dougherty was not on hand. The matter went along until the 6th of April and Mr. Dougherty called me by phone and wanted to know if he could have a meeting; I rather criticized him for the contempt he had shown us on March 4th and said

that it did not set well with our people, that they were business men and it was inconvenient for them to rush away to meetings, but I would like to get a meeting. I got in touch with the Chairman and arranged the meeting for the 21st and 22nd of April. On that date the committee of the stone
160 cutters appeared and on that date they presented their demands, demands consisting of the total elimination of the air tool, forty-four hours per week on machines with the two hours overtime Mr. Mitchell mentioned; providing that tool grinders, blacksmiths, diamond sawyers and stone cutters should belong to the organization; it provided that foremen should be members and subject to all rules. We sat in this committee four days. On the second day it became apparent that the meeting was going to break up, as the stone cutters were not in position to recede from the legislation of the convention. At the conclusion of the second day a committee representing the stone cutters union of New York City came in and endeavored to prevail upon both sides to go back in session to see if it were not possible to avoid a conflict. We said we were willing to meet as long as possible to bring about a settlement. Through the offer of the committee from New York there were subsequent meetings held. We met with them again and for a day or a day and a half wrangled with them over the same proposition and it again became apparent that they were not going to recede in any way, shape or form from the conditions the convention determined they must have. Along about the end of the fourth day of the meeting, I asked permission to have the contractors retire and I took those contractors into another room, and told them that in view of the fact that the stone cutters had submitted a proposition the best thing was for the contractors to submit a proposition and go as far as they could go to meet the conditions demanded. They agreed to my suggestion, and while this, gentlemen, is a copy of the minutes taken by the secretary, I do not ask you to take this as being authentic, except the copy of this agreement that we submitted to them, you can have that. The report of that meeting was taken by our secretary, who is a stenographer, but not with the mutual consent of the other parties in the conference.

(Thereupon a paper was marked for identification "Exhibit No. 1").

That proposition was not acceptable to the stone cutters, I do not think in any one clause, they took exception to practically everything. It provided for a closed shop agreement

internationally, and I might say for your information that at that time the International Cut Stone Contractors and Quarrymen's Association had approximately 189 or 190 members. The proposition was not acceptable, although it provided for a closed shop, the planermen might belong to their organization, and if so they would be in a separate local, 161 or at least in the making of wage schedules, and working conditions, the contractors would meet with a committee representing the planermen, but that an international officers of the Journeymen Stone Cutters' Association would sit in the meeting and be a party to the agreement, giving them jurisdiction over the planermen's agreement. It modified the use of the air tool as far as they could go but they could not countenance the demand on the machines, the eight-hour day, or for blacksmiths or tool grinders or the elimination of sub-contractors on tiling. I wish to explain that in the stone industry, particularly in the larger operations, there is what is known as stone carver contractors, they make a specialty of doing nothing other than carving; in many instances they are carried along by the architect, and they reserve the tiling and designate what contractor is to do it; those men contract this work and hire the men to do the work. The union for some reason or other—and in some instances there may be some justification for the claim where a man sets up as a tiling contractor and there is only one man contracting—but as a general rule the subcontracting of tiling is a benefit to the men and keeps them in steady employment. This agreement not being acceptable, the union proposed a thirty-day truce; this was not acceptable to the employers, for the reason that these laws were incorporated in the constitution, the elimination of air tools, eight hours on machines, they all were in the constitution. It was close of May first when this constitution would be in the hands of the men, and the employers felt that the local unions would take action to enforce those demands regardless of the truce the Union was willing to agree to, and it would cause warfare all over the country, and they were going to have an international agreement or none. On May first the union men were taken out of the shops and the operators proceeded as best they could to operate the shops. The men were taken out in many cities, as in the instance of this district, against whom the Union has a grievance. Steps were taken immediately by the contractors to keep their plants in operation, they got men from where they could, and also obtained men who left the Union.

The result was that in due time these men formed an organization and they operated it as an independent union; the contractors made agreements with those independent unions, and those agreements still have some one or two years to run. I have not a copy with me, although I asked them to send it to me. The situation went along in this manner, with
troubles in various cities, but I will confine myself to
162 Denver, until along in August, 1921. Mr. Mitchell mentioned two jobs in St. Louis; I shall deal first with the one in Kirkwood, a suburb of St. Louis, a school building or Catholic institution; that work was shipped into St. Louis complete. Upon its arrival in St. Louis, the stone cutters union sought the support of the Building Trade Council and took the building trades' men off the job. The result was that the shippers, with all others concerned, petitioned for an injunction prohibiting a secondary boycott, which was granted and still remains in force in favor Sheat & Donnelly only, as it was only their work that was affected. There had been some abuses of men down in the district and that occasioned another application for an injunction submitted to the court in Indianapolis, praying for relief from interference with material manufactured and shipped in Interstate Commerce. We now come to the other St. Louis job Mr. Mitchell mentioned, the Masonic Temple, or Scottish Rite Cathedral. Shortly before I heard of the trouble on this particular job, I either met Mr. Mitchell on the street or he come to our office on some business—at least I met him, and we had discussed the turmoil existing, and I was frank to say that I said to him then, as I might say this morning, nothing would please me better if the whole thing was straightened out, but, I said, "I am not the organization." Mr. Mitchell express a like desire to see the whole thing straightened out. This happened a few days before I heard of the St. Louis trouble. I then went to that city and found out the situation on this Scottish Rite Cathedral. I wired Mr. Mitchell, as he has stated, and I referred to our conversation a few days previous, and I think I suggested that if he desired it settled, such as he mentioned to me when talking of it a few days previously, he had better come to St. Louis and attempt to straighten out a very unfortunate situation, which only tended to increase or widen the breach. Mr. Mitchell came to St. Louis, as he explained, and we met. Mr. Mitchell made the proposition he related to you, he would put his men back to work for a period of two weeks, and in the meantime, while

I told him I could not guarantee him a meeting, I could not advise him whether the proposal would bring an answer yes or no, I was willing to put it before the board. The result was that in the course of two weeks I was able to give him an answer. I do not have the documents with me, but I think I am relating it just as it was. Our members were opposed to a meeting on those very principles I related when I had reference to the thirty day extension of the old agree-
163 ment; these orders were incorporated in the constitution and as long as they are, the locals will be governed by it, and while we did not ask Mr. Mitchell, as he inferred, to put down in writing just what they were willing to concede, we did suggest that if he had any proposition to offer, to place it in writing. The great trouble with the stone cutters union, since the 1921 convention particularly, certain fundamental conditions that should be matters of negotiation in an agreement, are matters that are cut and dried by the union and placed in their constitution. As long as they are in the constitution, our people look with considerable concern upon it. What happened to the job, I do not know, there was some trouble down there, some difficulty, I believe the party doing the job had to send his foreman and superintendent out to do some fitting on the job; I do not believe the men touched it, although the most of the stuff went on as considered best. It went on until our Cleveland Convention and Mr. Mitchell has stated what took place there, as to coming and being in the meeting with the board of governors. Mr. Mitchell has informed you of this, I think, with the exception of the manner in which he submitted these clauses in his constitution, in which he called the attention of his membership. I explained that there were certain fundamental principles that stood in the way of an agreement, and I enumerated them. I mentioned those particular clauses which were fundamental in an agreement. I had marked several of the clauses which, while not necessarily interfering with the agreement, but which from my experience both as an official of the Union and of the contractors, I believed should be modified for the benefit of the industry and all concerned; however, as far as it went it was all right. Mr. Mitchell sent it to his membership for a vote; the only exception I took was that he headed it the 16th and 18th causes were designated as Drayer's suggestions for changes in the constitution. I had merely pointed out that they be modified and had no suggestion as to the words which should take their place in the clauses that

existed in the constitution. As he stated, his membership was almost unanimous against making any change in the constitution, and the thing went on until along in April, 1923, when Mr. Mitchell petitioned for a meeting, and he has related the Buffalo meeting. I might say for Mr. Mitchell's benefit here, although I believe he realized it at Buffalo, that it was the position of the Union on the machine question that prevented any further discussion at that meeting. The Union had presented a tentative agreement in which they de-
164 clared that they must belong to the organization. However, after considering those matters and thrashing it out for an entire evening after it was submitted to the committee representing the employers, they rendered Mr. Mitchell an answer, in which they say they thought it would be to the advantage of both parties to let the question of a meeting ride over until after the Stone Cutters convention in October, when both parties might be in better position to make an agreement and after the committee had determined the advisability of a meeting. Following the convention Mr. Mitchell wrote me and explained that they had modified their laws; I answered the communication and said I would see what I could do to get a meeting. I put the matter out to our board and they replied that in view of the fact that our convention was two months hence, it was best to wait until after our convention, and I answered Mr. Mitchell. We held the convention, and in the meantime we had received the proceedings of the convention of the Journeymen Stone Cutters' Association and were conversant with what had been done at the Journeymen Stone Cutters' Convention. Following our convention in January, 1924, I wrote Mr. Mitchell, I think along the latter part of February, just what portion of the month I cannot say, or what date, but I told Mr. Mitchell that Mr. Fanning and I would be pleased to meet him in Indianapolis or Chicago if convenient; he replied at once and stated he would come and meet us on March third. We held a meeting on March third, as related by Mr. Mitchell, and he has given you the substance of our discussion. We advised him that there were certain things in the revised laws that we could not support, that our members would not accept the law on the machine question. We told him further that the International Association was not in position to make an international agreement, much as we desired to, due to the fight that had been brought on May 1, 1921, and the different conditions that had been built up since

that period, but we were in duty bound to take due cognizance of our constituents in Bedford, Kansas City, Detroit, Indianapolis, as those cities had established working conditions with others than journeymen stone cutters. We said we believed that if he desired to bring about peace, to approach the people opposed to the Union or engaged with others than the Union, and he agreed to do that, and he has related the substance of this discussion. We feel, gentlemen, that if we—and by we I mean the International Cut Stone Contractors and Quarrymen's Association—had been given the consideration to which we were entitled, if our Mission to New
165 York and our desire to renew an agreement had been given proper consideration, there never would have been the fight that exists to-day. I might say further that when this meeting was called, I begged of those men representing the Journeymen Stone Cutters' Association to get down and do business with the employers, but they were determined they were going to get the legislation enacted by the 1921 convention. Now, we come from that down to the present situation.

The inference is drawn here by the situation that has been created, that certain steps are to be taken to force McMillan and Son, or the International Cut Stone Contractors and Quarrymen's Association, to meet the Journeymen Stone Cutters' Association with a view to settling this whole affair. I might say that I am in identically the same position today that I was on March third when Mr. Mitchell called at my office. I wish conditions were different, I wish the Union had made it possible that I might have prevailed on those contractors and that this break had never come, but it is here, and as I say, I cannot give Mr. Mitchell any other answer than what I gave him on March third. The Union has taken an action against a fair contractor, by fair I mean one with whom they have friendly relation. I do not believe any grievance exists between Fernald and Walton and their business agents, except to get at McMillan & Company. I do not know what the Union hopes to gain by this, and I am very, very sorry to see it come, because it is going to be very broad in its complications. In Indiana the stone industry is confined almost entirely to the Indiana district, I mean the oolitic limestone, is confined almost entirely to the Indiana district, and I would judge that members of the Bedford Stone Club, which is the local organization of the International Association, comprise perhaps seventy per cent., to be conservative

sixty to seventy per cent., of all the cut stone and quarrymen shipping throughout this country and Canada. If the Union is to attempt to bring about a reconciliation by a move of this kind, it means that it is going to injure the interests of its fair contractors all over the country, as it has no grievance against them except that they have bought material partly finished, as they say, by men working in opposition to their orders. If they pursue this policy, the source from which a contractor like Fernald and Walton can obtain their material, is decidedly limited; I cannot say definitely just how many quarries there are in the Indiana district furnishing machine stone considered fair by the Journeymen Stone Cutters' Association; I do not know of any one of them
166 that is exclusively quarrymen furnishing machine stone to the cut stone trade throughout the country; there is Ingalls Stone Company, which is more a cut stone contractor than a quarryman; they may be in position to furnish a minimum amount of machine stone. As to the other firms of the district, Brooks, Struby Oolitic, Alexander King and one or two other small concerns, are engaged principally in furnishing cut stone, and some I question whether they have any quarries of their own. The result is going to be this, Fernald and Walton, and men in like situation, confined to this narrow field to obtain material, find it impossible to get the material. In the second place, if the country is to be confined to those three or four quarrymen, the situation will be reflected in the prices quoted by those concerns for machine stone, for the result will be that when Fernald and Walton, and other contractors, go into competition for a job, their figures will look radical and the result will be that the Bedford firms, against whom the men in a city have no kindly feeling because they ship material into the city finished and the local men get no opportunity for employment, are going to do all of this work. It is a situation I regret, gentlemen, and as I said a few minutes ago, it is going to have some very broad applications and complications, because there is no question but what a move in the direction of this move against Fernald and Walton is an application of the secondary boycott covered by numerous proceedings and court decisions, and there is no question but what it is going to result in an enormous amount of damage. I am not here to say what the Journeymen Stone Cutters' Association should do, I am here to put the situation before you that McMillan & Company is in, and to put the development of the dispute

before you so you may know how it has been brought about; but I want to say that I am satisfied if the Journeymen Stone Cutters' Association wants to bring about a settlement of the affair, it must be done by means other than antagonism. I think that, frankly, will cover the case as far as the International Cut Stone Contractors and Quarrymen's Association or McMillan & Son, whom I represent, are concerned; there being no war with the Journeymen's Association, but we are in duty bound to protect a member when they get into a situation of this kind.

Q. Can you give me any idea how many cities are affected by this order from the International Union?

A. When the order became known to our office, we immediately notified our members and we have some 250, or
167 approximately 250 at this time, that they were to promptly report to our office any strike on the part of the Journeymen Stone Cutters' Association because of this particular issue. The first instance that came to our notice was Denver; the second was Kokomo. Another fellow up there, a member of our Association, operating in a small way, they took his cutters away; they worked and were off and worked and were off, and finally let the work alone. Two days ago we had word of taking men out of small contracts who had nothing but hand setting in New Jersey. This morning I understand there is trouble at Lansing, Michigan. Four instances is all I know of.

Mr. Mitchell: Let me ask; you stated that just prior to the New York convention there was an agitation as to the question of the air hammer and the machine question. Don't that go back to 1916, 1917 and 1918 when there was a move for the examination on the physical use of the air hammer, and didn't the contractors meet with the cutters before the New York convention was thought of and brought up all of this agitation, and still you have not served notice there would be no agreement—

Mr. Drayer: You ask first if this agitation on the air hammer had not preceded by many months the date of the New York convention. I will say yes, it had been a subject of agitation by the stone cutters for a number of years. It had been the subject of agitation when I was secretary of the Union. The agitation got so strong it forced myself and Mr. Griggs to take it up in the legitimate way. We took the question up with the Department of Labor, and in turn with the American Association for labor legislation, and that institu-

tion forced a government examination of the men, which was quite extensive in its effect. They sent investigators into the Indiana district and other districts and questioned the men, or rather took men to Chicago and put them in the hospital, and a report came out by the government which minimized the air hammer as the thing that crippled men; there is no question but what there was difficulty, but the feeling was more pronounced than the injury. The result was that when the question went to the Indiana inspectors, Mr. Griggs suggested they do not enact any legislation affecting the air hammer. Now, coming to the question of a contract meeting with a committee of the men; they did have a meeting, but there was a cause for that meeting, because your unions were doing the very thing I felt they were going to do in Matthews Brothers Shop in view of the agreement; one day unexpectedly they threw down the air tools and said "We are
168 done." They would not work with air tools and had been working with mallets, and when the contractors said to get busy with the air tools they walked out, and that resulted in the meeting; at that meeting the journeymen stone cutters agreed to go back to work and no local would be permitted to take similar action pending the agreement of the committee as to the air tools. We had to get men in Georgia to come to the Matthews shop. Detroit laid down its air tools during this truce of thirty days, and it was those things that started that.

Mr. Mitchell: The employers in Detroit did not belong to your association, but when they found the men in Detroit refused to use the air hammers, they having been notified that the men were not going to use them, they rushed to Chicago to join the contractors, and you took the grievance up.

Mr. Drayer: I beg to differ with you; they came to the meeting of reorganization in Chicago and joined the organization then, and this took place two years after to the best of my recollection.

Mr. Matthews: Do you remember the question came up at a meeting in Indianapolis; Mr. Griggs was in charge? We were brought there from Detroit, having the contract to negotiate on the limiting of the 6,000 feet in the City of Detroit; we were brought there to negotiate on the 6,000 feet and then there were over twelve or thirteen more things involved. We were in position to handle the 6,000 feet, and when we came we were double-crossed by the men that brought us there, and we were brought there to negotiate on

the air hammer and not on business in their city, and they brought up questions entirely foreign to what we were brought there for.

Commissioner Bell: I think we have the subject pretty well covered; what we would like to know is something about the local situation.

Mr. Drayer: Would you pardon me a moment if I make one further statement?

Commissioner Bell: Go ahead.

Mr. Drayer: I want to make this statement to show, first, that this move on the part of the Journeymen Stone Cutters' Association is inconsistent with its national policy; and second, to show why the contractors generally over the country have not been so ready to meet with the international officers or the international committee of the Journeymen Stone Cutters' Association. The Union has demanded a forty-four
169 hour week on the machine. When this fight was on and for many months after it was on that Mr. Mitchell told you of the instance, that is the amalgamation of the Cleveland union with the Journeymen Stone Cutters' Association, it did not only include the Cleveland union but Amherst. That is a stone cutting center like Bedford but not of such wide scope and dealing in sandstone. I do not know just how those negotiations were brought about, Mr. Mitchell can correct me if I am wrong, but I think Mr. Mitchell went to a representative of the employers in Cleveland and explained to him his desire to straighten up the situation. I believe the employer was not opposed to such a move, but he did say that Mr. Mitchell would have to first make some arrangement with the independent union; as a result of Mr. Mitchell's efforts in Cleveland and Amherst those two locals absorbed these independent unions and they all became members of the Journeymen Stone Cutters' Association, remaining so, and are working as such today; but in the City of Cleveland and Amherst—and the City of Amherst comprise the majority of the cut stone to cut stone contractors throughout Ohio and Pennsylvania where they use it—they provide that they do not belong to the Journeymen Stone Cutters' Association. Now, if Fernald and Walton, in Denver, had ordered their machine cut stone from some concern in Cleveland, there could have been no exception to it, because the Cleveland stone cutters work right along with men on machines who do not belong to the Union. Now, I want to show why this has some effect upon Mr. Mitchell's petition to our board for a meeting.

When they came to our meeting in Buffalo right after the ruling on the machine question and the forty-four hour week, and even more stringent since the October convention, yet at Cleveland—and they put in some sections as to what our board should do at the meeting—they have agreed that machine men shall not belong to the Union. Now, gentlemen, you can see the inconsistency of that position here, and you can see there was no great inducement or opportunity for the International to sit down with Mr. Mitchell and make an agreement, but in spite of the fact of this demand, we did agree to recognize the planermen as members of the Union.

Mr. Mitchell: Is it not a fact that our men work nine hours on machines in the Indiana district, members of our association never have worked any more and they work that at the present time?

170 Mr. Drayer: I do not know whether your men are working nine hours a day or not, I would not dispute it.

Mr. Mitchell: Didn't we eliminate the air hammer in our convention and notify you?

Mr. Drayer: Yes, but as I told you, you know there was some other differences that went along with the air tool that did not come out in the evidence.

Mr. Mitchell: Didn't I tell you in Chicago that the executive officers of our association were empowered to draw up an international agreement and we were willing to sit and negotiate, one on each side of the table with the employers and eliminate any of this friction that might be here.

Mr. Drayer: Didn't I ask you, or Mr. Fanning did, if you was prepared to recognize an agreement in certain localities with stone cutters not taking in the machine men, and didn't Mr. Fanning ask if there could not be certain modifications as to hours for machine work? You remember, Mr. Mitchell, my calling attention to the fact that the conditions set out in the October convention of 1923 were more stringent then in 1921, as you provided for a forty-four hour week and no overtime but operators could work extra shifts, and I pointed out that I feared it was going to cause trouble?

Mr. Mitchell: I might say that one of our delegates arose on the floor and stated they were working nine hours and working under an agreement.

Commissioner Bell: We have heard a lot of history back of this and I think you have proven to us that you have a controversy and it is hard to settle. We are more interested

in the local situation; can either one of you offer any suggestion for relieving that?

Mr. Drayer: I can offer this suggestion only, Mr. Bell; that is, that Mr. Mitchell would accomplish far more in this controversy by arbitration, and I think he can get an audience with the operators in those localities where they have trouble and try to point out to them as local entities that they would be better off with peace than they ever will accomplish by the method they have set out on. I want to say frankly that the membership of the International Association of Cut Stone Contractors and Quarrymen has determined it is going to protect the rights of cut stone contractors to buy where they please without a move to destroy their business. I believe much more can be accomplished by some solicitation than by antagonism or force. I have explained to Mr. Mitchell in committees that the international association 171 is not in position at this time, because of the various opinions of its numerous members, to take the initiative and attempt to bring about a settlement with the Stone Cutters' Association. I wish it were possible; I have been given the name of being the fellow who kept them apart, but I want to say before this Commission that if those from the Journeymen Stone Cutters' Association on May 1, 1921, had done as much as Drayer done to bring about a settlement, we would not be here arguing the question today.

Commissioner Bell: Have you any suggestion, Mr. Mitchell?

Mr. Mitchell: No, I was told at different times where I have tried and have been accused by our membership of going on my knees; I have gone every place, I have pleaded with them to give us a meeting and they have ignored it. They say, "Things are going along nicely," and tell me the position of our men. We do not boycott anybody, he can buy from whom, when and any place he pleases. All we say is that if the other fellow starts it our men don't have to finish it, they can finish it with the men that started it. That is all our order means.

Mr. Fernald: I would say as to the last suggestion Mr. Mitchell made, to buy stone where he pleases; how are you going to finish it? You have to buy from three, four or five men, and if they get a few jobs they cannot furnish the material; it takes all the work of the Bedford people and those men won't do anything. If I was to try to buy it from others I could not get it; as far as texture is concerned, I can get it,

but I could not get it at the price that would enable me to finish the job at a price satisfactory to my people.

Chairman Reilly: I do not know of anything further, gentlemen; the only things we can do is to go ahead and enter our award, which we will do as soon as possible. You realize that this is Saturday afternoon, we do not work tomorrow or Monday, the latter being Labor Day, but I think we can get out this award the first part of the week, and we will send a copy of the award to all parties interested, which I mean by that is that we will send copies to the local union, to Mr. Mitchell and Mr. Drayer.

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172 State of Colorado,
City and County of Denver. } ss.

I, J. C. PETERS, being duly sworn upon oath say that my name is J. C. Peters; that I reside at Denver, in the State of Colorado; that I am by profession a stenographic reporter; that I was employed by The Industrial Commission of the State of Colorado to take down in shorthand and transcribe in typewriting the testimony of the witnesses given before the Commission on the 30th day of August, A. D. 1924, in a certain cause entitled *In the Matter of Journeymen Stone Cutters Association of North America, Denver Local*, v. *Fernald & Walton*. That I took down in shorthand the testimony of the witnesses, and transcribed the same in typewriting, and that the attached sheets, Pages 22 to 56, inclusive, are a full, true and complete transcript of my notes of the testimony of the witnesses in said proceeding.

Dated at Denver, Colorado, this 4th day of October, A. D. 1924.

J. C. Peters

Subscribed and sworn to before me this 14th day of October, A. D. 1924.

Wm. R. Shaw
Notary Public

(Notarial Seal)
My Commission Expires July 28, 1926

And afterwards, towit: at the May Term of said Court, on the 22nd day of October, 1924, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Come now the complainants by their solicitors, and file affidavits in support of motion for preliminary injunction, which affidavits are in the words and figures following:

173 • • • • • •

At the City of Bedford, in the County of Lawrence in the State of Indiana on this 18th day of October 1924, before me, the undersigned, a Notary Public in and for said County and State, personally came C. D. DONATO of said City and State, who being by me first duly sworn upon his oath deposes as follows:

That affiant is the President and Manager of C. D. Donato Cut Stone Company, a corporation incorporated under the laws of the State of Indiana and which is one of the complainants in the above entitled cause of action. That affiant's said Company is engaged in the business of sawing, milling and cutting Indiana Limestone at the City of Bedford, in the State of Indiana, which stone, so sawed, milled and cut is sold by Affiant's said Company, principally to General Contractors, throughout various parts of the United States for use in the erection of buildings.

Affiant further says that since the 1st day of August 1924, by reason of the order of the Journeymen Stone Cutters Association of North America to the effect that their members should not after said date work upon any stone sold or furnished by firms which they considered unfair, affiant's said Company has had it's work interferred with by the refusal of members of said Stone Cutters Association to cut or fit stone sold by this Company, in the following instances:

On the Union State Bank Building at Chicago, Illinois in which instance we had prior to August 1, 1924, sold the stone to E. W. Sproul Company, General Contractors on the building and in which case the members of the Journeymen Stone Cutters Union refused to do the fitting on the job for the General Contractor. Also on the First M. E. Church building at Elgin, Illinois, in which case we had prior to August 1, 1924, sold the store to Schmidt Brothers Construc-

tion Company, General Contractors on said building, and in which case the members of the General Union refused to fit the stone for the General Contractor.

174 Affiant further says that the source of his information as to the interference with the work on the above mentioned jobs was obtained from Stefan Engineering Company, Chicago, Illinois, which company is a sales-agent for this affiant's said Company. That on or about October 15, 1924, this Affiant's said Company received through the United States Mails a letter bearing the signature of Stefan Engineering Company, signed by J. F. Stefan, addressed to this Affiant's company, bearing date of October 15, 1924, a true copy of which said letter is attached hereto and marked "Exhibit A".

Affiant further says that he is informed and believes that the work of both of the buildings above mentioned is still being interferred with by reason of the refusal of the members of the Stone Cutters Association, above mentioned, to work on said buildings.

C. D. DONATO.

Subscribed and sworn to before me, the undersigned, a Notary Public, in and for the County of Lawrence in the State of Indiana, this 18th day of October, 1924.

ELMA C. WATTERS,
(Seal) *Notary Public.*

My Commission Expires May 9, 1926.

EXHIBIT "A"

(Copy)

Stefan Engineering Company
417 South Dearborn Street
Plymouth Building

Chicago, Oct. 14, 1924.
Received Oct. 15, 1924
C. D. Donato Cut Stone Co.
Bedford, Indiana.

C. D. Donato Cut Stone Co.,
Bedford, Ind.

Gentlemen:

In reference to our being unable to get any work done here by the local union, we will state that the orders to do this came from the headquarters of the union where-ever that is.

But the man that was doing our work is Mr. John P. Kelly 2121 W. Adams St. Phone Seeley 2661, who was told that he must not finish the jobs he had started for us as he may come to harm. The president of the union is Mr. Patrick Cullen 542 W. 57th St. Phone Englewood 0914, who seemed to wash his hands of the whole thing stating, that to disobey orders from headquarters meant danger.

Ingalle Stone Co., seem to be the only ones for whom work is being done at present, our man working for that company without molestation. Incidentally our latest is one the Union State Bank where the union refused to work on same for the E. W. Sproul Co. Mr. Patterson of the latter company tried to get a man to complete the job with our permission but failed. We are now doing this work with a monument man.

Yours truly,

STEFAN ENGINEERING CO.

JFS:MEW By J. F. STEFAN (Signed)

* * * * * *

At the City of Bedford in the County of Lawrence in the State of Indiana on this 17th day of October 1924, before me, the undersigned, Notary Public in and for said County and State personally appeared B. P. CROWE, of said City and State, who being by me first duly sworn upon his oath deposes as follows:

That said affiant is Vice-President and General Manager of W. McMillan & Son, a corporation duly organized and doing business under the laws of the State of Indiana and having its principal office and place of business at the City of Bedford in said State; that said corporation is now and for several years last past has been engaged in the business of quarrying, sawing and milling Indiana Limestone and that during the last past eight months said corporation has further been engaged in the cutting of said Indiana Limestone, which said stone so quarried, sawed, milled and cut by said Company has been sold throughout practically all the States of the United States and in various places in the Dominion of Canada. That said Company sells its stone principally in blocks and semi-finished to Cut Stone Contractors, who in turn finish said stone for General Contractors, who are engaged in the erection and construction of buildings, which said buildings usually of considerable size and many

of which consist of Federal buildings, State buildings, School buildings, Churches, Federal Reserve Bank buildings, other Bank buildings and large office buildings and business blocks.

Affiant further says that said Company is one of the large companies operating in the Indiana Limestone District and that its sale of stone during the preceding year amounted to approximately one million six hundred thousand feet.

Affiant further says that following the order of the General Union, by which the Journeymen Stone Cutters Association of North America, is commonly known, was issued to the effect that its employees should not cut, fit or work upon any stone furnished by any firm which it considered unfair, after August 1, 1924, this Affiant's Company had two particular instances wherein the Cut Stone Contractors who had purchased stone of this Affiant's Company were seriously interferred with by the refusal of the members of said General Stone Cutters Union to work on stone previously sold by this affiant's said Company. That Affiant's said Company had sold, several months prior to August 1st, to Fernald & Walton, Cut Stone Contractors of Denver, Colorado, the stone for a School building at the City of Denver known as the "Mitchell High School Building", which said stone aggregated about thirty thousand feet; that about the first of August, 1924, said Fernald & Walton informed said Affiant's said Company that their stone cutters, who had been engaged in cutting said stone and fitting the same in the building had refused to further proceed with their work and that said Fernald & Walton were unable to proceed with their building operations on that account. That said Fernald & Walton, as affiant is informed, are still unable to proceed with their building operations on account of their stone cutters still refusing to work, notwithstanding the fact that an order was made by the Industrial Commission of Colorado, after a hearing on the controversy between said Fernald & Walton and their said employees, that said men should return to work. That said Fernald & Walton were and for about three years had been a valued customer of this affiant's said Company and has purchased stone for use in various buildings on which they had contracts, but said firm has stopped further shipments to it by this affiant's said Company on account of their inability to proceed with their work.

177 Affiant further says that another customer, Frank Besson of Kokomo, Indiana, who had been a customer of this affiant's said Company for many years, also informed this af-

fiant's Company, about the 23rd day of August, 1924, that since August 1st, 1924, he had had trouble in getting his stone cut and set in the buildings for which he had previously purchased stone from this affiant's said Company and that this affiant is informed and believes that said Besson has continuously since said date been unable to get his employees, who were members of said General Union to proceed with his work and that his building operations are now tied up on that account. That among the buildings being constructed by said Frank Besson for which this affiant's said Company had, prior to August 1, 1924, sold the stone to said Besson, and which are now tied up, for the reasons aforesaid, are the Christian Science Church at Kokomo, Indiana; Armstrong-Landon building at Kokomo, Indiana; Sisters Home and School, at Kokomo, Indiana; Upland School Building at Upland, Indiana and the Wagoner residence at Peru, Indiana.

Affiant further says that on or about the 24th of August 1924 this affiant's said Company received through the United States mails a letter signed by said Frank Besson, a copy of which said letter is attached hereto, and marked "Exhibit A"; this affiant has read the original letter and that the above copy hereof is a full, true and complete copy of said letter so received by this affiant's said company from said Frank Besson.

Affiant further says that in addition to the specific instances of interference with the work of the customers of this Affiant's said company as hereinbefore mentioned, the salesmen for this company have reported that their customers and prospective customers have frequently expressed fear of labor trouble in case they purchased stone from this affiant's said company on account of the orders and actions of said General stone cutters union in refusing to work thereon and said conditions still exist.

And further affiant sayth not.

B. P. Crowe.

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the County of Lawrence in the State of Indiana, this 17th day of October 1924.

Ruth Harrell,
Notary Public.

(Seal)

My commission expires May 9, 1926.

178 "EXHIBIT A"

Frank Besson
521 South Main Street
Kokomo Indiana

August 23rd, 1924.

(Copy)

W. McMillan & Son,
Chicago, Illinois.

Gentlemen:

I have had an awful time with stone cutters since the 1st of August. At that time I had four working—they stopped for a while and was off work for several days and then started work again and quit working again in a few days.

Later some of them returned to work again only to quit in a few days again.

At present we have no stone cutters working—none since the middle of last week. They refuse to work unfinished or planed stone. They refuse to cut sawed stone if planed stone is being used on the same job and as a result I am making slow progress. I will have to get some stone cutters somewhere.

Yours truly,

FRANK BESSON.

State of Michigan }
County of Calhoun } ss.

JAMES G. SHIRLAW, being duly sworn deposes and says that he has been engaged in the cut stone building business in the City of Battle Creek, Michigan, for approximately thirteen years as a cut stone contractor. That on or about November 2, 1923 this deponent contracted for the cut stone work on the Masonic Temple building in the City of Lansing, Michigan. That immediately upon signing the contract with the general contractors for the cut stone work on the above mentioned building this deponent entered into a contract with the Chicago and Bloomington Stone Co., of Bloomington, Indiana, which contract required the Chicago and Bloomington Stone Co., to furnish and ship to this deponent all of the cut stone used by this deponent on the above named building in the semi-finished condition. That the said build-

ing required approximately eight thousand cubic feet of
179 stone, the delivery for said cut stone to be made by the said Chicago and Bloomington Stone Co., in the spring of 1924.

Deponent further says that he purchased said stone so used by him from the Chicago and Bloomington Stone Co., in a semi-finished condition and that said stone was shipped from Bloomington, Indiana on or about the 6th of June 1924 to Lansing, Michigan where the employees of said deponent were to finish said stone by hand.

Deponent further states that prior to August 1, 1924 all of his stone cutters were members of the Journeymen's Stone Cutters Association of North America and that they were members of said association at the time this deponent entered into the contract for the cut stone on the above mentioned building. That on or about the first of August 1924 the work on the said building was approximately one fifth finished.

Deponent further says that on or about the middle of July one James Martin who was employed by this deponent on said job as a stone cutter and who is secretary of the local branch of the Journeymen's Stone Cutters Association of North America in the City of Battle Creek, notified this deponent that on and after the first of August 1924 he and the other stone cutters so employed by this deponent on said job would refuse to do any further stone cutting for this deponent on said job for the reason that planermen employed by the Chicago and Bloomington Stone Co., were unfriendly to the Journeymen's Stone Cutters Association of North America. That, accordingly on the said first day of August 1924 the said James Martin and all of the other stone cutters so employed by this deponent on said job did quit and refused to do any further stone cutting on said job. That on or about the 15th day of August 1924 one Michael Mitchell who is president of the Journeymen's Stone Cutters Association of North America came to Battle Creek, Michigan and informed this deponent that the men belonging to the association of which he is the president could do no further work for this deponent on the said Masonic Temple Building in the city of Lansing and gave as his reason that the employees or stone cutters employed by this deponent belonged to the Journeymen's Stone Cutters Association of North America and that he would not permit any men of his association to complete work finished or started by the Chicago and

Bloomington Stone Company of Bloomington, Indiana, for the reason that the Chicago and Bloomington Stone Company employed men in cutting and plaining the stone used by
180 this deponent which were unfair to the Journeymen's Stone Cutters Association of North America and that he would not permit any member of the association to work on any material started and partially finished by plainermen other than members of the Journeymen's Stone Cutters Association of North America.

Deponent further says that on account of the order of said Michael Mitchell the men whom this affiant had employed as stone cutters for the work above mentioned refused to go back on said job and work for this deponent.

Deponent further says that on or about the 25th of August, 1924, this deponent went to Indianapolis and conferred with the said Michael Mitchell further in regard to allowing the said stone cutters to go back to work and complete the said above mentioned job, and that upon that occasion this deponent was informed by the said Michael Mitchell that if this deponent would cancel his contract with the said Chicago and Bloomington Stone Company for the balance of the semi-finished stone so to be furnished by them to this deponent under the terms of their contract and purchase the balance of the stone so to be used on said building from concerns who employed plainermen friendly to the Stone Cutters Association of North America, that he would allow the said employees of this deponent to go back and complete said job for this deponent and that upon that occasion the said Michael Mitchell gave to this deponent the names of four concerns who are in the cut stone and quarrying business and who employ plainermen who are friendly to the Journeymen's Stone Cutters Association of North America.

Deponent says further that he knows in a business way the four concerns so mentioned by said Michael Mitchell and that he knows of his own knowledge that none of said concerns could give him sufficient quantity and the service he would require in order to complete the said job in accordance with the terms of his contract and that furthermore none of the four concerns mentioned could handle the material necessary for this contract at as low a price to this deponent as he was able to obtain from the said Chicago and Bloomington Stone Company.

Deponent further says that on account of the order of said Michael Mitchell and by reason of the employees of this de-

ponent so quitting that this deponent was greatly inconvenienced and put to considerable extra expense and trouble
in finding other men who had sufficient experience in the
181 stone cutting business to do the work properly on the
said job of this deponent. Deponent says further that from the said first day of August until on or about the 18th day of September he was unable to get any stone cutters whatever on the said job.

Deponent further says that during the past seven years he has used approximately thirty-five cars of stone per year and that practically all of this stone has been purchased by him from the said Chicago and Bloomington Stone Company and that during all of said time the business relations between the said Chicago and Bloomington Stone Company and this deponent have been entirely agreeable in every respect.

JAMES G. SHIRLAW.

Subscribed and sworn to before me this 18th day of October, 1924.

HAZEN C. SWEET.

(Seal) *Notary Public, Calhoun County, Mich.*

My commission expires Feb. 10, 1920.

* * * * * *

At the city of Bloomington in the County of Monroe in the State of Indiana on this 20th day of October, 1924, before me, the undersigned, Notary Public in and for said County and State, personally came W. H. JOHNSON, who being by me first duly sworn upon his oath deposes as follows:

That affiant is Secretary and General Manager of The Chicago & Bloomington Stone Company, which is one of the complainants in the above entitled cause of action; that affiant said Company is engaged in quarrying, sawing, milling and cutting Indiana Limestone, which product it has been engaged in producing and selling for the past thirty-one years; that its principal place of business is at the City of Bloomington in the State of Indiana.

Affiant further says that his said Company sells approximately eighty-five (85) per cent of the stone produced by
182 it in blocks, sawed and planed to cut stone contractors
throughout the United States and that the remaining fifteen (15) per cent, approximately, is finished by affiant said

Company and is principally sold to general contractors for installation in buildings being erected by them.

Affiant further says that this said Company, since August 1, 1924 has had two of its customers incur labor troubles by reason of the refusal of the members of the Journeymen Stone Cutters Association of North America to work on the stone sold to said customers after August 1st pursuant to a General Order issued by said Stone Cutters Association to the effect that after August 1, 1924, its members should work on no stone which had been sold by any firm which they considered unfair to them.

In further detail of the difficulties of said two customers this affiant further says that about the month of November, 1923, affiant's Company sold to James G. Shirlaw of Battle Creek, Michigan, the Indiana Limestone to be used in the erection and construction of the Masonic Temple at Lansing, Michigan, for which said Shirlaw has taken the contract; that there was approximately eight thousand cubic feet of stone in said contract and that said stone was sold in a semi-finished state, that is, sawed and planed, but not cut and that the cutting thereon was left to be done by said Shirlaw at the building site, that perhaps more than half of said stone had been shipped to said job prior to August 1, 1924, after which said date, as this affiant is informed by said Shirlaw, his stone cutters refused to do further work thereon; that this affiant met said Shirlaw at the City of Indianapolis on or about the 25th day of August, 1924 on which said date the said Shirlaw also had an interview with Michael Mitchell, President of said Stone Cutters Association, in an effort to adjust his difficulties and get his stone cutters to proceed with his building. That after said Shirlaw had an interview with said Mitchell on said date, said Shirlaw informed this affiant that said Michael Mitchell, during his interview with him on that date, had promised said Shirlaw that if he would cancel his contract with this affiant said Company for the purpose of the stone for said Masonic Temple and would purchase the remainder of his stone therefor from one of the firms which he considered fair to his Union, that then and in that event the members of his union would proceed with said work and would finish it for him. That said Shirlaw further informed this affiant that the said Michael Mitchell thereupon gave to the said Shirlaw a list of four firms from whom he could so

183 purchase said stone and it would be sanctioned by said Stone Cutters Association and that none of said firms

were Complainants in the above entitled cause of action. That said Shirlaw immediately following his conference with said Mitchell came to this affiant and reported the result of his interview and asked this affiant if he would be willing to cancel his said contract for the balance of said stone. That at said interview at Indianapolis with said Shirlaw he requested this affiant's said Company to stop further shipment of stone on said job until further directed by said Shirlaw.

Affiant further says that the other instance of interruption with one of the customers of affiant said Company was that of the Schmidt Cut Stone Company of South Bend, Indiana, to which Company this affiant's Company had sold the Indiana Limestone for the Elks Temple building to be erected at Valparaiso, Indiana. That said purchaser reported to this affiant's Company that he anticipated trouble with said work on said Building on account of the order of the General Union of Stone Cutters that their members should not work on stone produced by certain firms, which included this affiant's Company, on and after August 1, 1924. That this affiant is not sufficiently familiar with the difficulties of said Schmidt Cut Stone Company to set the same out in detail, but that said purchaser had asked this affiant's company to be prepared to furnish some stone cutters for said job and that this affiant's Company informed him that they would probably be unable to supply cutters for said job.

This affiant further says that both James G. Shirlaw and said Schmidt Cut Stone Company were valued customers of this affiant said Company and had been such valued customers for several years last past and that each of said customers have been purchasing approximately thirty-five (35) cars of stone per year from affiant said Company, the said James G. Shirlaw for the past seven years and the said Schmidt Cut Stone Company for the past four or five years.

And further affiant saith not.

W. H. Johnson

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the County of Monroe in the State of Indiana this 20th day of October, 1924.

Temple Bradford,
(Seal) *Notary Public.*

My commission expires August 6, 1928.

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At the City of Bloomington in the County of Monroe in the State of Indiana this 20th day of October, 1924, before me, the undersigned, a Notary Public in and for said County and State, personally appeared B. G. HOADLEY, who being by me first duly sworn upon his oath deposes as follows:

That affiant is the President and General Manager of J. Hoadley & Sons Company, one of the Complainants in the above entitled cause of action. That affiant said Company is engaged in quarrying, saying, milling and cutting Indiana Limestone and has been so engaged for many years last past. That affiant said Company sells its product throughout the United States and in some places in the Dominion of Canada. That part of its stone is sold in blocks, part of it sawed, part of it planed, and the remainder of it in the finished state, which is commonly called cut stone; that its finished product, or cut stone, is usually sold to general contractors for use in various building projects for which they have the contracts. That the blocks, sawed stone and semi-finished stone is generally sold to other cut stone contractors to be finished by them at their cut stone plants which are scattered throughout the United States.

Affiant further says that on or about the 8th day of March, 1924 this affiant's company sold to Hegeman-Harris Company approximately 190,000 cubic feet of Indiana Limestone, to be used in the construction of the Tribune Tower Building at the City of Chicago in the State of Illinois and that the contract price for said stone was approximately $574,000. That approximately two-fifths of the stone for said job had been shipped prior to August 1, 1924. That shortly after the 1st of August 1924, it became necessary for this affiant said firm to furnish stone fitter to do certain fitting work on the stone used in said building; that affiant is informed that the members of the Journeymen Stone Cutters Association of

185 North America refused to do the fitting on said building because of the General Order which had been issued to the members of their Association that they should not do any work after August 1, 1924 o nany stone produced or sold by any firm which they considered unfair, and this affiant said firm was one of such socalled "unfair" firms. That because of the refusal of the members of said Journeymen Stone Cutters Association to work on the stone in said building, at

the building site, in the City of Chicago, this affiant's firm has been compelled to send from its plant at Bloomington, Indiana, sufficient stone cutters to do the fitting on said building and that the men so sent by this affiant said firm to the City of Chicago were sent at a sacrifice to this affiant said firm, not only because of the additional expense thus incurred, but also because of the fact that their production at their own plant has thereby been impaired and that affiant's firm needs all the men it can get to keep up its production and make its shipments as contracted to be made and as required by the purchasers of its product. That four of its stone cutters have had to thus be taken out of its Bloomington plant and sent to the City of Chicago and that had the members of said Stone Cutters Association not refused to work on said building, as aforesaid, this affiant's firm could have kept said four employees in their Bloomington plant and thus have kept up a better production and could have thus facilitated the filling of their orders. That prior to August 1, 1924 the members of said Journeymen Stone Cutters Association of North America had worked on buildings where any stone was furnished by this affiant's said Company in whatever cities the buildings were situate.

And further affiant saith not.

B. G. HOADLEY

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the County of Monroe in the State of Indiana, this 20th day of October 1924.

GEO. D. THORNTON,
Notary Public.

(Seal)

My commission expires Sept. 21, 1925.

186 And the defendants in support of their contentions, offered and read in evidence the following affidavits and documents:

* * * * * *

State of Indiana
County of Marion } ss:

MICHAEL W. MITCHELL, being first duly sworn upon his oath, deposes and says:

That he is now, and has been since October, 1921, President of the Journeymen Stone Cutters Association of North

America; that said Journeymen Stone Cutters Association of North America is a voluntary association of mechanics engaged in the stone cutting trade; that said association grew out of a former voluntary organization of said mechanics organized in 1853, and that said original organization was re-organized into the present international association in the year 1888; that said association has during all its history been governed by the Constitution and By-laws regularly and legally adopted in conventions made up of delegates from different local unions affiliated with said international association; that the headquarters of said International Association is located at Indianapolis, Indiana; that in the United States of America and Canada said International Association is possessed of, approximately, five thousand members, divided into, approximately, One Hundred and fifty local unions; said five thousand members automatically become members of said International Association; that dues are paid by the members of said unions
187 for the support of said International Association and of said local unions; that the officers of said International Association consist of a President, Vice-President, General Secretary-Treasurer and nine members of an Executive Board, which officers are elected by referendum vote of the membership of the Association for a period of three years, and that said local unions also elect officers consisting of a President, Vice-President, Corresponding and Financial Secretary, which said officers are elected by the membership of said local unions; that said local unions also are possessed of a Constitution and By-law, which are not permitted to be in conflict with the Constitution and By-laws of the International Association;

By Article II of the Constitution of said International Association the persons eligible to membership in said local unions consist of journeymen stone cutters, carvers, curb setters, curb cutters, bridge cutters, planermen, lathmen, and carborundum moulding machine operators engaged in the cutting, patching and fabrication of all stones and artificial stones;

As contained in Article III of the Constitution of said International Association, the objects of said Association are as follows: "To protect and improve the welfare of its members; to educate them in the aims, objects and principles of organized labor; to promote greater loyalty, cooperation and mutual aid among our members and all organized workers;

to encourage a higher standard of skill in order that the industry mat benefit as well as the individual member who devotes his time to improvement, and to cultivate a feeling of friendship among men of our craft;

That for more than fifteen years last past the quarriers and cut stone contractors of the United States of America have been organized into an international organization for their mutual protection and benefit along the same lines as indicated in the objects of the aforesaid International Association of Journeymen Stone Cutters of North America;

That beginning with the year 1913 an international working agreement was entered into by and between the two said international associations, by the terms of which agreement the labor relations between the two said organizations were clearly set out and defined, and that by the terms of said international agreement said Contractors Association agreed to employ members of said general union exclusively; that

no scale of wages was agreed upon in said international
188 agreement, but said wages were to be determined by and between the local unions and local contractors who were members of said National Associations;

That, pursuant to said international agreement, said Contractors Association and said General Union worked harmoniously until the year 1918, and that except for a short space of time said General Union and said Contractors Association worked harmoniously in so far as labor conditions were concerned until May 1st, 1921, since which time no international agreement has existed between the two said Associations;

That at this time there exists an international association among said contractors and quarriers, known as the International Cut Stone Contractors & Quarrymens Association, Inc., and that all of the plaintiffs in this cause are members of said International Association, and that, as aforesaid, said General Union and said International Contractors and Quarrymens Association, by and through their duly and legally appointed representatives, worked harmoniously under an international working agreement up to May 1st, 1921, and that since said date no such agreement has existed;

That since May 1st, 1921, said General Union by and through its regularly and legally elected officers has made repeated and continuous efforts to obtain a working agreement with the said International Association of Contractors and

Quarries, but that all efforts upon the part of said General Union have failed to accomplish said result;

That, as will more fully appear hereinafter, Article X, Section II of the Constitution of said International Journeymen Stone Cutters Association has been in existence during all of said period of time since May 1, 1921, which article and section provides in substance that any member of said Association shall be automatically suspended who shall cut, carve or fit any material that has been cut by men working in opposition to said Association; that to a greater or less extent the members of said General Union have been working upon material that has been cut by men working in opposition to said Association, but that in a very few instances only has said rule been enforced and any member suspended from the Union; that the general officers of said General Union did not automatically suspend members so working upon said material, with the hope that an international working agreement could be effected by and between the two International Association aforesaid;

189 Affiant further says that the failure to perfect such international working agreement is largely attributable to the plaintiffs herein; that 90% of the production of parties plaintiff is produced by machine men, and that said condition prevails at the Bedford-Bloomington district where plaintiffs are located; that during all of the period of time from May 1, 1921, said plaintiffs have persistently refused to give to said General Union any consideration of machine men in the Bedford-Bloomington district as recognized members of said General Union;

That prior to May 2d, 1921, the International Cut Stone Contractors and Quarrymen's Association, Incorporated, and the Journeymen's Stone Cutters Association of North America worked under an international agreement. This agreement was entered into July 11, 1918 to continue until April 30th, 1921. This international agreement was executed on behalf of the International Cut Stone Cotnractors and Quarrymen's Association by three of the Presidents and General Managers of the plaintiff companies herein, viz: Henry Struble of the Henry Struble Cut Stone Company, who, at said time, was President of said Contractors and Quarrymen's Association, A. E. Dickenson of the Consolidated Stone Company, and C. W. Walters of the Indiana Quarries Company. Said international agreement was executed on behalf of the Stone Cutters Association by one Sam Griggs, Pres-

ident, and one Walter W. Drayer, Secretary. Said Drayer is at the present time and has been since January, 1920, President of the International Cut Stone Contractors and Quarrymen's Association.

Said international agreement recognized the constitution and by-laws of the Journeymen's Stone Cutters Association in Article 12 as follows:

"It is understood that arbitration as referred to must not be so construed as to apply to the fundamental principles established and contained in the Constitution and By-laws of the Journeymen's Stone Cutters Association."

That the said contractors and quarrymen's association recognized machine men as within the jurisdiction of said General un n was shown by the fact that six months before said international agreement was entered into and while said Drayer was an official of said international union, the constitution and by-laws of said Journeymen's Stone Cutters Association contained a clause—Article II, which read as follows:

190 "The members of this association shall consist of Journeymen Stone Cutters and Carvers, Blue Stone Cutters and Carvers, marble cutters, marble setters and carvers, bridge and curb cutters, tool sharpeners and grinders, and all who operate stone, blue stone, marble and artificial stone cutting and sawing machinery etc."

That said International Cut Stone Contractors and Quarrymen's Association recognized, on March 27, 1919, machine men as members of the union was shown by the fact that on said date said Mr. Dickinson as President of said Contractors and Quarrymen's Association signed a working agreement for and on behalf of the Bedford Stone Club, of which practically all the plaintiffs herein were members at that time and the local stone cutters and machine men's locals of the Bedford-Bloomington District, which recognized and made part of said local agreement the said international agreement, herein referred to. By said international and local working agreements, said international association of Stone Contractors and Quarrymen recognized stone-cutters, carvers, planermen and diamond sawyers as members of the Journeymen's Stone Cutters Association as aforesaid.

As aforesaid, following the 2d day of May, 1921, repeated and continuous efforts were made for and on behalf of the Journeymen's Stone Cutters Association of North America to effect an international working agreement between said Inter-

national Contractors and Quarrymen's Association and said General Union.

A conference was held at Indianapolis, Indiana, on May 19th and 20th, 1919, for the purpose of clarifying and interpreting the existing international agreement, and as shown by the official minutes of said conference, said Dickenson, President of the International Stone Contractors and Quarrymen's Association, said:

"In your constitution (the Stone Cutters) it says that your members will include stone-cutters, carvers, machine men and saw men. We have given you the machine men. All you have got to do is to take them in."

Affiant further says that later, to wit: in January, 1920, at the next annual convention of the said International Stone Contractors and Quarrymen's Association, said association refused to recognize diamond saw men as members of said Journeymen's Stone Cutters Association.

Affiant further says that at the next annual convention of said International Cut Stone Contractors and Quarry-
191 men's Association, Inc., held in Chicago in January, 1921, said Contractors and Quarrymen's Association resolved that said Contractors and Quarrymen's Association would no longer recognize planermen as members of the Journeymen's Stone Cutters Association.

Affiant further says that in the month of April, 1921, a joint conference of the representatives of the International Cut Stone Contractors and Quarrymen's Association and the said Journeymen's Stone Cutters Association was held in Indianapolis, covering a period of several days, and the said conference was held for the purpose of renewing the International Agreement which would expire April 30th, 1921. At said conference and as a part thereof, the said International Cut Stone Contractors and Quarrymen's Association was represented by the aforesaid Mr. Drayer as President, and the aforesaid Mr. Dickinson, Chairman of said Association's Executive Committee, and that said conference was presided over by said Dickinson.

Affiant further says that in said conference, held in April, 1921, said Mr. Dickinson for and on behalf of said International Cut Stone Contractors and Quarrymen's Association refused to recognize machine men as affiliated with said General Union, and at said conference said representatives of said Contractors and Quarrymen's Association refused to make any agreement with said General Union except such

agreement as would recognize stone cutters and carvers only as recognized members of said General Union.

That as shown in the printed report of said conference, so held in Indianapolis, in April, 1921, said Dickinson for and on behalf of said contractors and Quarrymen's Association declared that said Association Quarrymen and Contractors had never had an agreement with the Journeymen's Stone Cutters Association which recognized planermen as recognized members of said General Union; that said General Union in their desire to avert trouble, offered and agreed to continue work for a period of thirty days under the former international agreement, which expired April 30, 1921, for the purpose of trying to solve the difficulties then existing between said two international associations but the duly and legally appointed representatives of said Contractors and Quarrymen's Associated refused to further continue said negotiations and report as follows:

"We have made our plans for May 1st and are going ahead with them."

192 Affiant further says that prior to said declaration, to wit: on March 21, 1921, said Drayer did for and on behalf of said association send out to all members of said International Cut Stone Contractors and Quarrymen's Association certain bulletins and posters with a direction that same be displayed in all the shops and quarries of the members of said Contractors and Quarrymen's Association, a copy of which bulletin is as follows, to wit:

Matthews Bros. Co.

This shop has been operated under the terms of an International agreement between the International Cut Stone Contractors' and Quarrymen's Association, Inc., and the Journeymen Stone Cutters' Association of N. A.

This agreement expires by limitation April 30th, 1921, and despite the fact that the International Cut Stone Contractors' and Quarrymen's Association, Inc., has endeavored, through its executive officers, to arrange a meeting for the purpose of negotiating a subsequent working agreement, such endeavors have received no co-operation whatsoever from the officers of the Journeymen Stone Cutters' Association of N. A.

On and after May 1st, 1921, this shop will be operated under the following conditions:

First—The employment of journeymen stone cutters for pneumatic and hand cutting; eight hours per day, forty-four

hours per week, at wages such a different local conditions may warrant.

Second—In the employment of planermen, diamond sawyers, and all other labor necessary in the conduct of the stone industry, same shall receive such rate of wages as local conditions warrant.

Third—Foremen shall, without qualification, be recognized as the representatives of the employer.

Fourth—It is our purpose to rehabilitate the supply of skilled labor by the unrestricted employment of apprentices.

Fifth—The unrestricted use of the air hammer, and all machinery and appliances in the stone industry.

Sixth—It will be optional with the employer to have carving done either by day work, or by subcontract.

INTERNATIONAL CUT STONE CONTRACTORS' & QUARRYMEN'S ASSOCIATION, INC.

Affiant further says that a result of said action upon the part of said International Cut Stone Contractors and Quarrymen's Association, all members of the said Journeymen's Stone Cutters Association of North America were locked
193 out in twenty-six cities in the United States and Canada on and after May 2d, 1921, and that included in said twenty-six cities are all of the quarriers' and contractors' shops of the plaintiffs herein, located in the Bedford-Bloomington district, and that said members of said Journeymen's Stone Cutters Association of North America have from said May 2d, 1921, been locked out from plaintiff's said shops and quarries and in said twenty-six cities in the United States and Canada.

Affiant further says that on May 5, 1921, said Drayer as said representative of said Contractors and Quarrymen's Association sent out a bulletin to all the members of said association, which contained the following declaration:

"The declaration posted in the shops of the members of the Association on March 21st sets forth the conditions that should apply in the shop of every member of the association beginning May 2d. This was the unanimous action of the Chicago convention. If your men are working, it must be emphatically understood they are doing so under conditions named March 21, and this office would appreciate some word from you as to the situation in your city so that we may, at all times, for a complete schedule of conditions throughout

the country and thus be in a position to keep you informed daily."

Affiant further says that said plaintiffs, several years ago, organized what was known as the Bedford Stone Club which Bedford Stone Club was a local organization of the plaintiffs herein and affiliated with the said International Cut Stone Contractors and Quarrymen's Association, hereinbefore referred to; that one R. M. Richter was employed as General Manager of said Bedford Stone Club, and that following the actions of said International Contractors and Quarrymen's Association, said Bedford Stone Club continued the activities of said International Association in the Bedford-Bloomington District, and about May 15, 1921, organized what is known as "independent unions of stone cutters and carvers" and "independent unions of planermen" in the Bedford-Bloomington district and that said Bedford Stone Club by and through said Richter as general manager, did on the 20th day of July, 1921, issue bulletin No. 276, which is in the following words, to wit:

194

Bedford Stone Club
Bedford, Indiana
Indiana
Limestone
The Aristocrat Building Materials
July 20, 1921.

Bulletin No. 276

To All Members of the
Bedford Stone Club

Subject

Gentlemen:

When in touch with the following firms, please bring your influence to bear in an attempt to demonstrate to them that their attitude in labor matters is suicidal.

These Companies have surrendered all along the line to the arbitrary demands of labor and are giving employment to men whom you are fighting. Thus they contribute to a continuance of the unsettled conditions prevailing in the Cut Stone Industry, conditions which must be settled right if the Industry is to prosper and enjoy its full opportunities in the future.

We have reference to the following:

William Baitinger, Detroit, Mich.
Dallman-Weideman Company, Detroit, Mich.
Eastern Stone Co., Detroit, Mich.
Goodwillie Brothers, Detroit, Michigan.

Northern Stone & Granite Co., Detroit, Mich.
Wayne Cut Stone Company, Detroit, Mich.
American Cut Stone Company, Detroit, Mich.
Hubert A. Meier, Detroit, Mich.
George P. Mack, Detroit, Mich.

You will appreciate the need of cooperation and we anticipate your best efforts to the end that reason may prevail.

You of course are aware that while this list of firms looks large numerically, it represents but a minor percentage of the capacity of the Cut Stone Industry in Detroit. All the large and important firms in that City are standing up for their rights.

Member of
Chamber of Commerce
of the
United States of America
National Headquarters
Riggs Building, Washington, D. C.

Yours truly,

BEDFORD STONE CLUB
R. M. RICHTER,
Gen'l Mgr.

Affiant further says that Bedford Stone Club further black-listed members of the General Union by sending out in writing, on the 16th day of July, 1921, a list of fore-
195 men who belonged to said General Union and falsely and fraudulently alleged that said union men were on strike, whereas in truth and in fact, said foremen had been locked out as aforesaid, which list is as follows, to wit:

July 16th
1921
Foremen Who Struck with the Men
Chester Carter
Matt Conner
Joe Kell
Jack Nolin
Carl Stastney
Joe Schwab
Don Melton
Mike Thornton
Otis Miller

Affiant further says that in pursuance of their plans to organize alleged local unions in the Bedford-Bloomington district, said Richter as General Manager of said Bedford Stone Club, on the 29th day of June, 1921, sent to all Lawrence County members of said Bedford Stone Club applications

for membership to be signed by alleged members of said Planermen's Union of the Indiana Limestone District in Lawrence and Monroe Counties and alleged members of the Stone Cutters and Carvers Union of the Indiana Limestone District in Lawrence and Monroe Counties, which said applications are in the words and figures as follows, to wit:

Application for Membership

To the Planermen's Union of the Indiana Limestone District in Lawrence and Monroe Counties;

The undersigned hereby applies for membership in your union and promises to be governed by its rules and regulations.

.....

Recommended by *Applicant.*

.....

.....

Application for Membership

To the Stone Cutters' and Carvers' Union of the Indiana Limestone District in Lawrence and Monroe Counties:

The undersigned hereby applies for membership in your union and promises to be governed by its rules and regulations.

196

.....

Application Fee $..... *Applicant.*
Must accompany application

Affiant says that accompanying said applications was a certain Bulletin No. 251, under date of June 29, 1921, which bulletin was addressed and sent to all Lawrence County members of said Bedford Stone Club and which is in the following words and figures, to wit:

Bedford Stone Club
Bedford, Indiana.

Bulletin No.
251

Indiana
Limestone
The Aristocrat of Building Materials
June 29th, 1921.

To the Members
Bedford Stone Club.

Subject

Gentlemen:

Att: Lawrence County Members

Attached to copies of this Bulletin going to Lawrence County members are a number of applications, one set for membership in the new Stone Cutter's Union, and one set for membership in the new Planermen's Union.

Attached to copies of this Bulletin going to Monroe County members is one copy each of these respective applications, simply for their information and file for the present.

Lawrence County members are asked, when employing stone cutters and planermen, to either have them show a card indicating that the applicants are in good standing with the new unions or when they cannot produce such a card our members in Lawrence County are asked to have them sign one of the enclosed applications and pay $1.00. Such signed application and remittance should then be sent to the Bedford Stone Club for transmission to the proper Union officials.

Please be guided by the foregoing and save trouble in the future by making sure when you employ a stone cutter or a planerman that he either is already affiliated or prom-
197 ises to affiliate by signed application with the new District Labor organizations.

Yours truly,

BEDFORD STONE CLUB,
R. M. RICHTER
Gen'l Mgr.

RMR/bn

Member of
Chamber of Commerce
of the
United States of America
National Headquarters
Riggs Building
Washington, D. C.

Affiant further says that on June 15, 1921 said Richter for and on behalf of said Bedford Stone Club, issued Bulletin

No. 233 by the terms of which all members of said Bedford Stone Club were ordered and directed to discharge all employes who were not members of said alleged local unions not later than June 20, 1921, a copy of which bulletin is in the words and figures following, to wit:

Bedford Stone Club
Bedford, Indiana

Bulletin No.
223.

Indiana
Limestone
The Aristocrat of Building
Materials
June 15, 1921.

To All Members of the
Bedford Stone Club
Gentlemen: Subject

The meeting of the New Stone Cutters Union last night was not very well attended, it being apparent that the activities of Executive Board Member McWhirter have had considerable effect on the men generally. He has told them that Detroit and Milwaukee have signed up with the G. U.; that St. Louis has withdrawn from the International and a lot of other information of a similar nature. We called Mr. Drayer's Office this morning to find what they knew about these things, and are advised that there is nothing to them at all except there is a possibilities of St. Louis cutting loose. This last condition would not be surprising. The fact is that at St. Louis the G. U. has a strangle hold on the 198 stone industry—in fact, must be affiliated with the Iron Workers' Union, with a requirement that there be a foreman for each three employees.

The purpose of this Bulletin is again direct your attention to the action of the membership meeting, whereby Lawrence County firms not later than June 20th are required to have as Planermen only members of the New Planermen's Union, and as Stone Cutters and Carvers only members of the New Stone Cutters and Carvers' Union.

June 20th is only a few days off, and you are therefore urged to get busy among your men and with the Shop Stewards, so that when next Monday arrives, the situation will be cleared up.

This is no time to weaken or hesitate. As we said in an-

other recent Bulletin, we can not afford to slip a single inch now.

Yours truly,

BEDFORD STONE CLUB
R. M. RICHTER
Gen'l Mgr.

RMR bf
Member of
Chamber of Commerce
of the
United States of America
National Headquarters
Riggs Building,
Washington, D. C.

Affiant further says that notices were issued to all members of said Bedford Stone Club by and through its proper representatives, as follows, to wit:

NOTICE.

On and after Monday, June 20, 1921, all Stone Cutters and Carvers employed in this mill must be members in good standing of the Stone Cutters' and Carvers' Union of the Indiana Limestone District in Lawrence and Monroe Counties.

On and after Monday, June 20, 1921 all men operating Planers, Headers, Shapers, Lathes, and Milling Machines in this mill must be members in good standing of the Planermen's Union of the Indiana Limestone District in Lawrence and Monroe Counties.

Affiant further says that in order that its members 199 might be returned to work, said General Union made local settlements, wherever possible, with contractors and quarriers in its attempts to settle the difficulties existing in the industry aforesaid, and that said General Union did make local settlements in Milwaukee and other places in the United States and that the plaintiffs herein, who at said time were members of said Bedford Stone Club and through said Richter as General Manager of said Bedford Stone Club, issued bulletins, to wit: 279, 285 and 311, condemning said local settlements and appealing to the members of said Bedford Stone Club not to make local settlements and to refuse to recognize any local settlements made with said General Union.

That among the repeated efforts of said General Union to adjust the differences between said International Contractors and Quarrymen's Association and said General Union, Joseph Blasey, Secretary of said General Union, called upon said Mr. Drayer, on July 11, 1921, and requested that said International Associations endeavor to get together and make further efforts to adjust existing differences but that said Mr. Drayer, representing said Quarriers and Contractors Association in Indiana, refused such meeting and reported that the plaintiffs in the Bedford, Bloomington District had all the men they needed and were satisfied with conditions and did not see what good could come out of such meeting.

Affiant further says that following said attempt of said Blasey to effect a meeting between said Associations and said Richter as General Manager of said Bedford Stone Club issued Bulletin No. 273, on the 16th day of June, 1921, addressed to the members of the Bedford Stone Club, which letter is in the words and figures following, to wit:

Bedford Stone Club
Bedford, Indiana
Indiana
Limestone
The Aristocrat of Building Materials
June 16th
1921 Subject No. 273

To the Members:
Bedford Stone Club
Dear Sir:

The fiction factory is still functioning. Its latest fabrication is to the effect that our International has asked the Executive Board of Journeymen Stone Cutters' Association for a meeting.

200 We can say, upon Mr. Drayer's authority, that Mr. Joseph Blasey came to Mr. Drayer's office this week and made definite advances for a meeting. The gentleman left without an affirmative reply.

The I. C. S. C. & Q. Assn's. is definitely on record to the effect that it will not make an agreement with the Journeymen Stone Cutters' Association of North America, therefore, of course, there is no need of a meeting.

We say again, that whenever there are developments that mean anything, you will be advised from this office direct,

or from Mr. Drayer's office. Meanwhile, please remember constantly, that you will maintain your own peace of mind if you do not allow yourself to become short circuited in grape vine absurdities.

Yours truly,
BEDFORD STONE CLUB
R. M. RICHTER
Gen. Mgr.

RHR bn
Member of
Chamber of Commerce
of the
United States of America
National Headquarters
Riggs Building,
Washington, D. C.

Affiant further says that in furtherance of its said efforts to effect a settlement with said International Association of Contractors and Quarrymen, a meeting of the Executive Board of said General Union was held in Indianapolis, commencing August 8, 1921, and that a committee was appointed out of said Executive Board to wait upon said Drayer and inform him that said General Union was ready and willing to meet the employers in an effort to adjust all differences and formally requested a meting of the representatives of the two international associations, herein described; that said Drayer promised said committee that he would make an effort to bring about said meeting but after waiting more than a week and having received no definite reply from said Drayer, a committee was again sent to wait upon said Drayer and that said Drayer at said time informed said committee that he had taken the matter up with the said Contractors and Quarrymen's Association in the Bedford-Bloomington District and
that said Quarrymen and contractors, who are the plain-
201 tiffs herein, did not desire such a meeting and said Executive Board adjourned August 20, 1921.

Affiant further says that in furtherance of the efforts of said General Union to adjust the differences existing between said International Associations, the affiant as President of the said Journeymen's Stone Cutters Association went to Cleveland, in January, 1922, at which place and at which time the International Cut Stone Contractors and Quarrymen's Association was in annual convention, and that said affiant requested that he be granted the privilege of appearing before

said annual convention in an effort to adjust said differences but that said request was refused and he was given a hearing before the Executive Committee and the Board of Governors of said Association of Contractors and Quarrymen.

That at said hearing, said affiant was informed by said Dickinson, who was a member of said Executive Committee and Chairman thereof, that said General Union would have to call a convention and revise their constitution before any international agreement could be taken up. As a result of said conference, it was agreed that a representative of said Contractors and Quarrymen's Association would point out the clauses in the said General Union's Constitution which said employers claimed stood in the way of an international agreement; that said suggested changes were so pointed out by said representative and submitted to the membership of said General Union by the affiant herein as President of said General Union which general membership refused to endorse said changes; that the clauses sought to be stricken out of said constitution were of years standing and that most of same were adopted while said Drayer was an officer of the said Stone Cutters' Union, and that Article X, Section 2, which automatically suspends any member of said General Union from working upon material produced by men working in opposition to said General Union was not one of the clauses objected to or sought to be stricken out by said Contractors and Quarrymen's Association.

Affiant further says that while all the above repeated efforts toward adjusting the differences between the said two International Associations were fruitless that the members of said General Unions and Local Unions still continued to work upon the stone produced as aforesaid until the 1st day of August, 1924; and there were very few, if any, stoppages to work and that no violence, intimidation or threats were used by the members of said General or Local Unions or 202 by the executive officers thereof, and that no sympathetic strikes were threatened or involved among the members of other affiliated labor unions; that with the desire of setting the said difficulties, the affiant, as President of said General Union, permitted men to finish work started by men working in opposition to said organization in different cities and places in the United States.

That on the 6th day of October, 1922, the affiant as President of said General Union, received a telegram from said Drayer as follows, to wit:

AA53 72 Blue
JF St Louis Mo 6 145P
W Mitchell
President
Journeymen Stone Cutters Association 334 Amer Central Life Bldg Indianapolis Ind

If You Would Avoid Complications That Will Destroy Probability of General Adjustment You Express Yourself Desirous of Obtaining When We Talked Over Situation Monday Would Suggest You Come to St Louis at Once and Take Steps to Adjust Local Action That Can Only Further Complicate the Situation by Brining on Additional Trouble Please Wire Me Saturday Care Old Colony Club Hotel La-Salle Chicago Whether You Will Meet Me Jefferson Hotel St Louis Monday Morning

WALTER W DRAYER.

That said affiant went to St. Louis and met said Drayer and that said Drayer then promised that he would do all he could to try and bring about a meeting between the said two International Associations and that said affiant, thereupon, released said job, under the promise aforesaid of Mr. Drayer that a future meeting would be held, but affiant further says that said promise upon the part of said Drayer was broken and no future meeting held.

Affiant further says that in pursuance of said efforts to effect a compromise of the difference between said two International Associations, said affiant as President of said General Union did on April 9, 1923, write to said Drayer requesting a meeting of the two Associations for the purpose of trying to reach a settlement of said difficulties.

Affiant says that said request was granted and a joint meeting of the representatives of said two International Associations was held in the City of Buffalo, New York, June 11th and 12th, 1923, and it was agreed that said meeting
203 should adjourn until the next convention of said General Union, which was called to meet within a few months thereafter, when legislation might be enacted that would leave the Executive Board of said General Union free to negotiate an international agreement which would not conflict with any laws of said General Union's constitution.

Affiant further says that on the 8th day of October, 1923, said Journeymen's Stone Cutters Association met in its regular tri-annual convention in the City of Cleveland, Ohio, and that more than four days were spent by said convention

in consideration of the changes to the constitution proposed by said Drayer, as hereinbefore set out, and that practically every suggestion that had been made by said Employers Association was accepted by said Convention.

Affiant further says that by motion properly made and adopted said convention recommended that every job throughout the country be opened up and that the members of said general union be given permission to work on any job irrespective of where said work had been started or by him the work had been done, but with the proviso that after it had been fully and finally determined by the executive officers of said general union that no settlement would be possible then that a meeting of the Executive Board of said General Union should be called for the purpose of determining a day upon which said privilege should be withdrawn.

Affiant further says that said action at said tri-annual convention of said general Union was communicated to the International Cut Stone Contractors and Quarrymen's Association but that said Association in their annual convention held in Montreal, Quebec, in January, 1924, took no action thereon and addressed no communications to said General Union concerning said action.

Affiant further says that having exhausted all efforts to bring about a meeting between said International Associations and to perfect an international working agreement and having failed in said efforts, a meeting of the Executive Board of the Journeymen's Stone Cutters Association was called for the 27th day of June, 1924, in the City of Indianapolis, Indiana; that said meeting was held at said time and place and that said Board did, thereupon, adopt a resolution withdrawing the privilege given, as aforesaid, by said Cleveland convention, and that at said meeting of said Executive Board, it was determined that said privilege would be withdrawn on the 1st day of August, 1924.

That said order was officially promulgated by a certain
204 notice in writing dated July 7, 1924, and signed by Joseph Blasey, General Secretary, a copy of which written notice is incorporated in plaintiff's bill of complaint on pages 19 and 20.

Affiant further says, in answer to paragraph 10 of plaintiffs' bill of complaint, that the Crescent Stone Company, Empire Stone Company, Mathers Stone Company, Monroe County Oolitic Stone Company, and Star Stone Company, plaintiffs in this action, do not employ any men eligible to membership

in the General Union; that as alleged in said paragraph of plaintiffs' complaint, said five plaintiffs employ only sawers, and do not employ planermen, lathemen and other men over whom defendant association has jurisdiction; and that therefore said order of August 1, 1924, does not apply to said five parties plaintiff, and that said five plaintiffs are in no wise affected by this order;

Affiant further says that no combination of conspiracy exists between the defendants in this case to prevent the use and sale in interstate commerce of Indiana limestone produced by the plaintiffs;

That, as is set out in details hereinbefore, said defendants and neither of them have any ill will or malicious purpose toward the complainant parties herein; that said order of August 1, 1924, as hereinbefore fully explained, was not made through malice or to otherwise injure said plaintiffs or any of them, and that any injury which may have occurred to said plaintiffs, or any of them, as incidental to the enforcement of said order of August 1, 1924, was not premeditated nor caused or occasioned by defendants herein for the purpose of disturbing the good will, trade or interstate commerce of the plaintiffs, or any of them. That said enforcement of said order of August 1, 1924, was neither caused nor occasioned by any desire upon the part of the defendantants, or any of them, by any malice or ill will growing out of any disputes hereinbefore set out in detail, but wholly in pursuance of the legal rights of said General Union, and growing out of the desire upon the part of the defendants, and all of them, to further the purposes and objects of said General Union and its affiliated local bodies;

Affiant further says that said Journeymen Stone Cutters Association of North America, its officers and members and its affiliated local unions, their officers and members, are not engaged in a combination and conspiracy to prevent the exercise of the trade of stone cutters, planermen, lathemen, trimmers,

etc., by any person in any state in the United States
205 who is not a member of said Journeymen Stone Cutters

Association of North America or one of its local unions, and that no attempts have been made by either said General Union, its officers, or said local unions, or their officers, or the members of said respective bodies to prevent by threats, force, violence or intimidation the exercise by any person whomsoever of his trade as planerman, latheman, carver or stone cutter;

Affiant further says that said General Union, its officers, and said local unions and their officers, have not attempted, as they lawfully might do, to induce by peaceful persuasion men now working in complainants' quarries in the State of Indiana to leave their employment or breach their alleged contracts with their employers or to become members of the local or general unions hereinbefore referred to;

Affiant further says in answer to Specification A of paragraph 18 of plaintiffs' bill of complaint that, as is hereinbefore more specifically set out, the said section quoted in said subdivision A, whereby members of said General Union are automatically suspended for cutting, carving, or fitting any material that has been cut by men working in opposition to this Association, was not written into the Constitution of the Journeymen Stone Cutters Association of North America for the purpose of furthering any alleged combination or conspiracy against the plaintiffs herein, but was in truth and in fact written into said Constitution long prior to the difficulties now existing between the plaintiffs and defendants herein, and that the substance of said Article in said Constitution has been adopted and re-adopted by numerous conventions of the said General Union since the year 1912.

Affiant further says in answer to Specification B of paragraph 18 of plaintiffs' bill of complaint, that he, as the President of said General Union had no notice or knowledge of the letter addressed to the Albert Neukom Cut Stone Company of Toledo, Ohio, by John Sucklin, Secretary, on the 14th day of February, 1924, and that said affiant, as said President of said Association, had no knowledge of the existence of such a letter until read by him in complainants' bill of complaint herein; that as Secretary of said local union of Toledo, Ohio, said Sucklin had no authority whatsoever to issue such a notice to said Albert Neukom Cut Stone Company, or any other contractor;

Affiant further says in answer to Specification C of paragraph 18 of plaintiffs' bill of complaint herein, that he has at no time declared, either orally or in writing, to the
206 membership of said General Union, or to the membership of any local union, or to the trade generally, that complainants herein are unfair, and affiant further says that he has not published or caused to be published circulars and lists of stone producers and stone contractors which either expressly or by implication classify the complainants and their products as unfair or objectionable to organized labor;

Affiant further says in answer to said Specification C that he has never threatened or suggested that any architect, owner, building contractor or cut stone operator who attempts to purchase and use materials produced by complainants will suffer labor troubles and inconvenience through strikes of stone cutters in their places of business or on buildings then being erected wherein the product of plaintiffs was used or to be used.

Affiant further says in answer to the affidavit of Frances Dodd Tovey, herein filed, that on page 24 of the official report of the Fifteenth General Convention of the Journeymen Stone Cutters Association of North America held in Cleveland, Ohio, on October 8-20, 1923, nor in any other part of the official report of said convention does it appear that resolution No. 5 as set out on page four of said Frances Dodd Tovey's affidavit was ever passed by said Convention ,and that in truth and in fact said resolution was not passed and adopted.

Affiant further says in answer to the affidavit of said Frances Dodd Tovey that special Article four as follows to wit: "This organization guarantees full protection to its officers in case of any litigation that may be brought about through any action in the performance of their duties as officers of this Association" was passed by the Cleveland Convention in October, 1923, but was first adopted in the Thirteenth General Convention of said General Union held at Indianapolis, Indiana, in January, 1918, and that special Article four, above referred to, was not inserted into the Constitution of said General Union in contemplation of the order of August 1, 1924, or any ramification thereof.

Affiant further deposes and says that the statement contained in said Tovey's affidavit on page five thereof, that affiant, as President of said General Union made any statement in said monthly report of any action concerning work "upon stone quarried" is untrue and that no action was taken by said Cleveland Convention or any other convention concerning work on "stone quarried."

MICHAEL W. MITCHELL.

207 Subscribed and sworn to before me this 23rd day of October, 1924.

ANNA M. HESBERG,
(Notarial Seal) *Notary Public.*
My commission expires March 26, 1926.

* * * * * *

State of Indiana, }
County of Marion. } ss.

MICHAEL W. MITCHELL, being first duly sworn upon his oath deposes and says that in reply to the affidavit of one James G. Shirlaw filed herein, he deposes and says that at the request of the members of the Journeymen Stone Cutters Association of North America, living or working in the city of Battle Creek, Michigan, on the 15th day of August, 1924, he visited said City on said date; that upon said request he conferred with said James Shirlaw and was informed by said Shirlaw that he the said Shirlaw had under construction three uncompleted jobs of stone work; that at the special instance and request of said Shirlaw he, the said Mitchell, as President of said general union, granted permission to the members of said general union to complete two of said unfinished jobs; that this affiant was informed by said Shirlaw that the third job would consume a period of approximately eight or nine months. Affiant further says that he informed said Shirlaw at said time that he could not as said President of said general union grant permission to the members of said general union to complete said third job which would occupy such a long period of time; that said order of August 1, 1924, was uniform in its application and that he had no authority to grant such permission concerning said third job.

Affiant further says that on the 25th day of August, 1924, he, at the request of said Shirlaw, met said James G. Shirlaw in the City of Indianapolis, Indiana, and conferred with him concerning the job at Lansing, Michigan; that at said 208 conference said affiant did not state to said Shirlaw that if he, the said Shirlaw would cancel his contract with the Chicago and Bloomington Stone Company for the balance of the semi-finished stone to be furnished by the Chicago & Bloomington Stone Company, to said Shirlaw under the terms of the contract then existing between said Shirlaw and said Company, and that if he, the said Shirlaw would purchase the balance of the stone so to be used on said building in Lansing, Michigan, from concerns who employed planermen friendly to the Stone Cutters Association of North America, that he, the said Mitchell, would allow the said employes of said Shirlaw to go back and complete said job for said Shirlaw.

Affiant further says that upon said occasion he, the said affiant, did not give to said Shirlaw the names of four concerns who were in the cut stone and quarrying business and who employed planermen who were friendly to the Journeymen Stone Cutters Association of North America; affiant further deposes and says that upon occasion said Shirlaw approached him, the said affiant, and made inquiry whether if he, the said Shirlaw would cancel the contract for said stone with the Chicago & Bloomington Stone Company and would give said contract to certain other quarrymen, whether he, the said Mitchell, would give permission to the members of said general union to work upon said stone in said building, and that thereupon that he, the said affiant stated to said Shirlaw that he would not entertain such a proposition under any circumstances.

Affiant further says that he did not give to said Shirlaw the names of four concerns who were in the cut stone and quarrying business and who employed planer men who were friendly to the Journeymen Stone Cutters Association of North America, but on the contrary that he, the said Mitchell, refused to give to said Shirlaw a list of concerns who were in the cut stone and quarrying business and who employed planermen who were members of said general union.

Affiant further says that as aforesaid he refused to consider a proposition of granting permission to the members of the general union to work upon any job under contract by said Shirlaw conditioned upon his cancelling his contract with the Chicago and Bloomington Stone Company; and that long after said definite refusal was made by said Mitchell in said conversation, said Shirlaw made inquiry of said affiant as to what firms were employing members of said
209 general union and that he the said Mitchell casually mentioned some of the names of such firms, not for the purpose of indicating to said Shirlaw what firms were friendly or unfriendly to said general union, and that he the said affiant upon observing the said Shirlaw putting said firms in writing refused to continue the conversation further along that line and that at said time and place emphatically declared to said Shirlaw that he under no circumstances would give a list of such firms.

Affiant further says that if he the said Shirlaw had been desirous of obtaining a list of the quarries in Bedford Bloomington District who employed members of said general union, that he the said Shirlaw could have obtained same from W.

H. Johnson who makes affidavit in this case, and who had borne long standing contractual relations with him the said Shirlaw, and who was thoroughly familiar with the list of any and all firms in said district which employed said members of said union, and that he the said W. H. Johnson was at said time and now resides in the City of Bloomington, Monroe County, Indiana.

MICHAEL W. MITCHELL.

Subscribed and sworn to before me this 23rd day of October, 1924.

ANNA M. HESBERG,
Notary Public.

(Notarial Seal)
My commission expires March 26, 1926.

* * * * * *

State of Indiana }
County of Marion } ss.

JOSEPH BLASEY, being first duly sworn upon his oath deposes and says:

That he is General Secretary and Treasurer of the Journeymen Stone Cutters Association of North America and has occupied such office since May, 1919.

210 That the chief cause of the present difficulties now existing between the Journeymen Stone Cutters Association of North America and the International Cut Stone Contractors and Quarrymen, Inc., is due to the fact that said contractors and quarrymen's associations are now refusing, and have for a long period of time last past refused, to recognize machine men as recognized members of said General Union.

Affiant further says that by the elimination of such machine men as recognized members of said General Union that said contractors have attempted for a long period of time last past, and are now attempting, to eliminate more than 50% of the men employed in the stone cutting industry in the Bedford-Bloomington district owned and operated by the plaintiffs herein.

Affiant further says that the limestone produced in the Bedford-Bloomington district has practically no grit to wear away planer tools, which grit had proven a detriment previously experienced in the machining of limestone, and that the use

of the machine in the cut stone industry has in recent years greatly increased, and that at the present time stone cutting machinery has been developed to such a state of perfection that the hand stone cutter has been practically eliminated.

Affiant further says in answer to the affidavit herein filed by R. M. Richter, in which he states that a large proportion of the output of said Bedford-Bloomington district is shipped in the form of rough blocks or sawed and re-sawed slabs, that the General Union and its members have no objection to working on such rough blocks or scabbled blocks, and that plaintiffs herein are in no wise injured in their business or good will by reason of said fact.

Affiant further says that said Richter in his affidavit herein states, that it is his "further observation that from one-fourth to one-third of the output of the Indiana Limestone District is shipped in the completely finished state; that is for erection in buildings in the United States and Canada. These finishings, or cut stone operations, require the services of expert estimators, draftsmen and shop forces in that an architect's plans and specifications, as a rule, are totally inadequate for the direct production of the cut stone required," and that said Richter by said statements intends to convey to the Court that it is necessary, when stone is shipped in the completely finished state that stone cutters and carvers be also employed on the building site in the erection of said stone construction work.

211 Affiant further says that such statement or implication is untrue; that in the construction of the Continental National Bank Building in the City of Indianapolis, upon which all stone construction work is now completed, not a single stone cutter was employed; that all of the stone that went into the construction of said building was cut, planed and carved at Bloomington, Indiana. Affiant further says that large numbers of public and other buildings are constructed, as was said Continental National Bank building of Indiana, where all the stone was cut, carved and planed in the quarries or in the contractors yards, without the use of a stone cutter upon the building site.

Affiant further says that for years prior to the 1st day of August, 1924 it was the custom of quarries and cut stone contractors to send a stone cutter from their plant to the building site for the purpose of overseeing and fitting the job, and that if there be any trimming or joining on said job said work is performed by said stone cutter so sent by said stone

contractor, and that the fact that the plaintiffs herein are not, as alleged in the affidavits filed herein, compelled to send one or more stone cutters from the contractor's yards is nothing new in the stone industry, and that such custom has been followed for many years last past.

Affiant further says in answer to the affidavit of said Richter to the effect that the plaintiff firms in the Bedford District shipped jobs complete to set in the wall to all parts of the United States and Canada and depend upon local stonecutters to do the fitting and trimming, that in truth and in fact there are eleven states in the Union in which said General Union has no local or membership and that there are thirteen additional states in which said General Union has only one small local in each of said states, and that in all of said twenty-four states it is necessary for the contractors to send men from their local yards to assist in the construction of buildings of any considerable size, and that said condition prevailed long before August 1, 1924.

Affiant further says in reply to the affidavit of said Richter, to the effect that the plaintiff companies are suffering difficulties in obtaining stone cutters since August 1, 1924, that said condition in the trade is not unusual, and that, as shown by the correspondence and requests on file in the headquarters of said General Union at Indianapolis, during said year of 1923-1924 there has been a wide-spread demand for stone cutters throughout the United States of America.

212 Affiant further says in answer to the affidavit of one Houlsby, filed herein, that the Journeymen Stone Cutters Association of North America has never issued any statement to, or communicated with, one William H. Wilson, of Chicago, Illinois, to the effect that the Consolidated Stone Company of Bedford, Indiana, or any other firm was "unfair" to organized labor, and that said General Union has never issued any statement to, or communicated with the said Wilson to the effect that any firm or firms were "fair".

Affiant further says in reply to the affidavit of Frank Besson, filed herein, that on the 18th day of April, 1924, he went to Kokomo and conferred with one Clarence Cook, who was connected with the firm of architects employed in the construction of the Armstrong & Landon building in the City of Kokomo, and that said affiant was informed by said Cook that there had been no delays on account of labor troubles upon said building, and that there had been no labor trouble experienced in the construction of said building, and that he, the

said Cook, knew of no labor trouble connected with the construction of said building.

Affiant further says that he visited the First Christian Science Church mentioned in said Besson's affidavit, and found all the stone for this job was set in place, and the carpenters were preparing to build the roof thereon; the only stone work yet to be done on said job was the steps of said building and the inscription to be cut over the entrance thereof, and that said affiant learned that said Besson, who is a good stone cutter was doing the lettering on said inscription, and doing the stone work himself.

Affiant further says that he visited the shop of said Besson in the City of Kokomo, and there found Herbert Bourne working in said shop, carving stone for the said Armstrong & Landon building.

Affiant further says that he learned in said City of Kokomo that the said First Christian Science Church and said Armstrong & Landon building were the only jobs that Mr. Besson was working on at this time.

Affiant further says that the only stone being used in the Armstrong & Landon building was for the purpose of trimming, and that there were not four thousand cubic feet of stone in said job.

Affiant further says that the work on said job is not tied up and delayed, as alleged by Mr. Besson, but that said job is rapidly nearing completion.

JOSEPH BLASEY.

213 Subscribed and sworn to before me, this 24th day of October, 1924.

ANNA M. HERBERG,
Notary Public.

(Notarial Seal)

My commission expires March 26, 1926.

* * * * * *

State of Indiana } ss.
County of Marion }

HIRAM H. CHASE, being first duly sworn upon his oath deposes and says:

That he resides in Indianapolis, Indiana, and is a stone cutter by trade and a member of the Journeymen Stone Cutters Association of North America;

That he is acquainted with one Frank Besson of Kokomo,

Indiana, and was employed by said Besson from the month of March until the month of August, 1924; that while so employed by said Besson he worked upon the stone that went into the construction of the sisters home and school at Kokomo, Indiana, and that he is familiar with the construction of said building, and upon his oath deposes and says that all the stone work used in the construction of said sisters' home and school was fully completed prior to August 1, 1924;

Affiant further says that he is familiar with the construction of the Upland school building at Upland, Indiana, and that said Besson had the contract for the stone work in said building, and that, as he is informed and believes, all the stone that went into the construction of said Upland school building was sawed stone and that the order of August 1, 1924 promulgated by the General Union did not apply to the stone used in the construction of said school building, and at all events that said job was practically finished on or before August 1, 1924.

HIRAM H. CHASE.

214 Subscribed and sworn to before me, this 23rd day of October, 1924.

ANNA M. HERBERG,
Notary Public.

(Notarial Seal)
My Commission expires March 26, 1926.

* * * * * *

State of Indiana }
County of Marion } ss.

GEORGE GIVENS, PATRICK J. MURPHY, LLOYD HOOPINGARNER, OSCAR PETERS, WILLIAM BAHR, HENRY BEARD, W. P. STEIN, THOMAS RUSH and CHARLES H. GOODALL, being first duly sworn upon their oaths depose and say:

That they occupy the official positions in the different Indiana locals as charged in plaintiffs' bill of complaint;

That they have read the charges contained in said bill of complaint in so far as it applies to their alleged activities in the instant case, and upon their oaths depose and say that they have not declared orally or in writing to their membership and the trade generally that complainants are unfair,

and have not declared that the stone produced by them is unfair because cut or work upon by men working in opposition to the Journeymen Stone Cutters Association of North America.

Affiants further say that they have not published or caused to be published any circulars or lists of stone producers or stone contractors which, expressly or by implications, classify the complainants and their products as unfair or objectionable to organized labor.

Affiants further say that they have not threatened or suggested that any architect, owner, building contractor or cut stone contractor who attempts to purchase and use materials produced by the complainants or any of them, will suffer
215 labor troubles and inconvenience through strikes of stone cutters employed by cut stone contractors in their places of business where said materials are fabricated, nor have they threatened or suggested to such architects that strikes of stone cutters will occur under such circumstances.

Affiants further say that in no instance have they either threatened or suggested to any architect, owner, building contractor or cut stone contractors that other building trades employed upon buildings where such materials are used would strike by reason of the fact of the use of such materials in such buildings.

Affiants further say that they have not instigated, incited or joined in and have not threatened to instigate, incite or join in any strikes of stone cutters or other craftsmen upon buildings in states other than the State of Indiana where the aforesaid material was being installed.

Affiants further deny that they are attempting to bring about a condition where architects, contractors, owners of buildings, building contractors and cut stone contractors would refuse to buy products of plaintiff companies; and further deposes and say that they have used no threats of any kind or character which would cause aforementioned class of persons to refrain from purchasing or using materials produced by the complainants or any of them.

Affiants further say that they are not endeavoring wilfully induce, compel or coerce the plaintiffs or any of them to violate or breach their contracts and working agreements with the so-called stone cutters and carvers union of Lawrence and Monroe Counties and the Planermens Union of Lawrence and Monroe Counties, and that they have not announced or threatened that they will interfere with the business and interstate

commerce of the complainant companies until such time as said companies will breach and terminate said agreements to enter into agreements with these affiants and the defendants to this suit.

Affiants further say that they have not knowingly and wilfully induced and attempted to induce employers, contractors and employers under contract to work on the product of complainants to breach and fail to carry out said contracts.

Affiants further say that since the first day of August, 1924, nor prior thereto, there has been no picketing on the part of any of the members or officers of the local unions named in plaintiffs' bill of complaint, and that there has been no violence or assaults of any kind or character growing out of the cessation of work by members of said local unions 216 on August 1st, 1924, upon the materials described in plaintiffs' bill of complaint.

GEO. GIVENS.
PATRICK J. MURPHY.
LLOYD HOOPINGARNER.
OSCAR PETERS.
WM. BAHR.
HENRY BEARD.
W. P. STEIN.
THOMAS RUSH.
CHAS. H. GOODALL.

Subscribed and sworn to before me, the undersigned Notary Public, this 22nd day of October, 1924.

ANNA M. HERBERG,
(Notarial Seal) *Notary Public.*
My commission expires March 26, 1926.

* * * * * *

State of Indiana }
County of Marion } ss.

CHARLES H. GOODALL, being first duly sworn upon his oath, deposes and says: that he is one of the defendants in the above entitled cause and is, as charged, Secretary of Ellettsville Local of the Journeymen's Stone Cutters Association of North America; that he is working at the present time for the A. J. Thompson Stone Company of Ellettsville and has been employed by said company and the Harding & Cogs-

well Cut Stone Company of Ellettsville for a long period of time; that both said firms are engaged in the fabrication of cut stone and have no quarry of their own and purchase their stock in mill blocks and sawed slabs.

Affiant further says that neither he nor any other member of the Journeymen's Stone Cutters Association of North America who is employed in either of said firms are refusing to work nor have refused to work upon mill blocks and
217 sawed slabs purchased from the plaintiffs herein or any of them.

Affiant further says that approximately thirteen members of the Journeymen's Stone Cutters Association of North America and said Ellettsville Local Union or other local unions are employed constantly by the two firms above named.

CHAS. H. GOODALL.

Subscribed and sworn to before me, this 22nd day of October, 1924.

ANNA M. HERBERG,
Notary Public.

(Seal)

Commission expires March 26, 1926.

State of Indiana, } ss:
County of Marion, }

* * * * * *

DEAN ACUFF, being first duly sworn upon his oath, deposes and says: that he is one of the defendants in the above entitled cause and that he is charged with being Secretary of the Stinesville, Indiana, Local of the Journeymen's Stone Cutters Association of North America.

Affiant says that he has not been cutting stone for a period of eight or nine years with the exception of a few weeks in 1922 and that there are only two members of said Stinesville local and that said local has not had a meeting for eight or nine years.

Affiant further says that he keeps up his membership in said local union wholly on account of the insurance feature connected with said membership, and that he is now employed as a farmer and has abandoned the business of stone cutting.

DEAN ACUFF.

Subscribed and sworn to before me, this 22 day of October, 1924.

ANNA M. HERBERG,
Notary Public.

(Notarial Seal)
My commission expires March 26, 1926.

218 * * * * * *

State of Ohio }
County of Lucas } ss:

Personally appeared before me, a Notary Public within and for said County and State, JOHN SUCKLIN, who being first duly sworn upon his oath deposes and says:

That, as alleged in plaintiff's bill of complaint herein, he did send to the Albert Neukom Cut Stone Company of Toledo, Ohio, the letter set out upon page 17 of plaintiff's bill of complaint; that said letter was dated February 14, 1924; that he was at said time and is now the Secretary of the Toledo Ohio local of the Journeymen Stone Cutters Association of North America; that the said letter so sent to the Albert Neukom Cut Stone Company of Toledo, Ohio, was the result of action taken by said Toledo, Ohio, local of said Association at its regular meeting held February 7, 1924; that said letter, and said notice therein contained, was not directed by, nor caused to be issued by, the said Journeymen Stone Cutters Association of North America, or any officers thereof; that said letter and notice therein contained was sent wholly by reason of the action of said local union, and in so far as affiant knows was sent without the knowledge of any of the defendants in the above entitled cause, and that no consent was asked or given by any of the general officers of said Association either prior or subsequent to the sending of said letter.

JOHN SUCKLIN.

Subscribed and sworn to before me, this 22 day of October, 1924.

H. A. KRUEGER,
Notary Public.

(Notarial Seal)
My commission expires: Dec. 16, 1924.

219 Chicago Building Trades Council
179 West Washington Street, Room 904
Telephone Main 1279
Meets Every Friday Evening at 8 p. m., 180 W. Washington Street, Second Floor

Affiliated Trades

Architectural Iron Workers, Asbestos Workers and Insulators, Boiler Makers and Helpers, Bricklayers and Stone Masons, Chicago Drain Layers, Ceramic, Mosaic & Encaustic Tile Layers & Helpers, D. C. Bridge and Structural Iron Workers, D. C. Cement Workers, Electric Workers, Local No. 134, Elevator Constructors, Elevator Operators and Starters, Fixture Hangers, Gravel and Composition Roofers, Hod Carriers and Building Laborers, Executive Council, Hoisting Engineers Local No. 569, Journeymen Stone Cutters of America, Marble Workers, Marble, Slate and Stone Polishers, Machinery Safe Movers and Riggers, Marble, Mosaic and Terrazzo Workers and Helpers, Plasters O. P. I. A. Sign and Bulletin Board Hangers, Stone Derrickmen, Sprinkler Fitters and Helpers, Tuck Pointers and Front Cleaners, United Ass'n of Steam Fitters Helpers, United Association of Plumbers, United Association of Gas Fitters, Technical Engineers' Architects' and Draftsmen's Union No. 14.

Chicago ..... 192....

This is to certify that the stonecutters at present employed on the Tribune Building, and the Elk's Memorial, now under course of construction, are not members of the Chicago Local of the Journeymen Stone Cutters Association of N. A., and that said Chicago Local of the Journeymen Stone Cutters Association of N. A., which is affiliated with the Chicago Building Trades Council, has not solicited or obtained the assistance of any other trade to change conditions on the above named job or any other.

F. J. Conroy,
Secy-Treas

Subscribed and sworn to before me this 10th day of October, 1924.

Samuel Wiesz
Notary Public.

(Notarial Seal)

220 State of Indiana }
County of Howard } ss:

Before me, Valley C. Duck, a Notary Public in and for the County and State aforesaid, personally appeared HERBERT BOURNE, who, being first duly sworn deposes and says:

That at the time I figured stone carving on the High School Building in East Chicago, Indiana, for the Consolidated Stone Company, it was with the sole intention of finding out the prevailing prices of stone carving in Bedford, Indiana, without any intention of entering into contract with the Consolidated Company, or of doing the work, and further affiant saith not.

HERBERT BOURNE

Subscribed and sworn to before this 18th day of October, 1924.

VALLY C. DUKE
Notary Public.

My commission expires Jan. 20, 1926.

and this was all the evidence given in the cause.

We hereby acknowledge that within the time allowed and in accordance with Rule 75 and before presentation to the Court for approval, the above and foregoing Narrative Statement of the evidence was presented to us, and we have examined and approved the same.

FREDERICK VAN NUYS
Solicitors for Appellees Journeymen Stone Cutters Association of North America, et al.

The above and foregoing Narrative Statement of Evidence is now on the 30th day of April 1926 approved and ordered to be filed in the Clerk's office and made part of the record for the purposes of the appeal in this cause.

ROBERT C. BALTZELL
Judge of the U. S. District Court For the District of Indiana.

Apr. 21. 60 And afterwards towit at the November Term of said Court on the 21st day of April, 1926, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

61 * * * * * *

This cause came on to be heard and was submitted by the parties for trial, finding and final decree. The Court having hearing the evidence and argument of counsel and being sufficiently advised in the premises finds that the equities are with the defendants and it is now therefore

Ordered that the Bill of Complaint herein be and the same is hereby dismissed for want of equity.

To which ruling of the Court the plaintiffs at the time excepted.

ROBERT C. BALTZELL
Judge U. S. District Court
District of Indiana

Entered April 21 1926

Apr. 24. 62 And afterwards towit at the November Term of said Court on the 24th day of April, 1926, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Come now the plaintiffs by their respective attorneys and file petition for appeal and assignment of errors, which are in the words and figures as follows:

64 * * * * * *

PETITION FOR APPEAL.

The Complainants above named, and each of them, believing themselves to be aggrieved by the Final Decree entered herein on the 21st day of April, 1926, dismissing the Bill
65 of Complaint herein for want of equity, do hereby appeal from said final decree, to the United States Circuit Court of Appeal for the Seventh Circuit, and they, and each of them, severally pray that their appeal may be allowed and that the transcript of the records and proceedings, evidence, and

PAGE CUT OFF

papers upon which the said final decree was made and upon which the Court acted in making the same, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated—Indianapolis, Indiana, April 24-1926

CHARLES MARTINDALE
Solicitor for Complainants
(1107 Fletcher Trust Building)
Indianapolis, Indiana.

The foregoing Petition for Appeal is hereby allowed this 24 day of April, 1926.

(Signed) ROBERT C. BALTZELL
United States District Judge.

66

* * * * * *

ASSIGNMENT OF ERRORS.

Filed Apr. 1926.

Now come the Complainants in the above entitled cause, Bedford Stone Company, Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. MacMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company, The Hoosier Cut Stone Company, and file the following As-

67 signment of Errors upon which they and each of them will rely upon their appeal from the final decree made and entered by this Honorable Court of the 21st day of April 1926 dismissing the Bill of Complaint herein for want of equity:

First: That the Court erred in rendering and entering said final decree that the bill of complaint herein be dismissed for want of equity.

Second: That the final decree rendered in this cause is contrary to equity and contrary to law.

Third: The Court erred in failing or refusing to find upon the evidence offered and admitted, that the defendants' com-

bination constituted a violation of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", as amended, and in failing or refusing to hold that the Complainants were entitled to the relief prayed for in their Bill of Complaint.

Fourth: The Court erred in failing to hold that the complainants were suffering or were threatened with irreparable damage due to the unlawful acts of the defendants.

Wherefore the Complainants and each of them pray that said final decree be reversed and direction be given to enter a final decree as prayed for the in the Bill of Complaint.

CHARLES MARTINDALE
Solicitor for Complainants.

WALTER GORDON MERRITT,
New York City, N. Y.
Of Counsel.

68 (Entry for April 24, 1926 continued)

And having been submitted to the Court the appeal herein is granted upon filing bond in the sum of Two hundred fifty Dollars ($250.00)

r. 24. And the plaintiff now files appeal bond in the sum of Two hundred fifty Dollars ($250.00) with the United States Fidelity & Guaranty Company as surety thereon, which bond is approved by the Court and is as follows:

69 * * * * * * *

BOND.

Know All Men by These Presents: That we, Bedford Cut Stone Company, and The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Headley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Sons, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company, The Hoosier

Cut Stone Company, as principals, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto the above named Journeymen Stone Cutters Association of North America and
70 Michael W. Mitchell, individually and as President of the Journeymen Stone Cutters Association of North America, Joseph Blasey, individually and as Secretary and Treasurer of Journeymen Stone Cutters Association of North America, George Taylor, Arthur MacPherson, William J. Hagan, James A. Gowen, Alex MacDougall, Joseph Wall, James Taylor, Alex Taylor, James L. Smith, each and respectively, individually and as constituting the General Executive Board of Journeymen Stone Cutters Association of North America, Bedford, Indiana Local, Journeymen Stone Cutters Association of North America, George Givens, individually and as President of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America, Patrick J. Murphy, individually and as Corresponding Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America, Lloyd Hoopinggarner, individually and as Financial Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America, Bedford Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America, Oscar Peters, individually and as Corresponding Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America, William Bahr, individually and as Financial Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America, Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America, Henry Beard, individually and as President of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America, W. P. Stein, individually and as Secretary of Bloomington, Indiana
71 Local, Journeymen Stone Cutters association of North America, Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America, Thomas Rush, individually and as Secretary of Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America, Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America, Charles H. Goodall, individually and as Secretary of Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America, Stinesville, Indiana Local, Journeymen

Stone Cutters Association of North America, Dean Acuff, individually and as Secretary of Stinesville Indiana Local, Journeymen Stone Cutters Association of North America, in the sum of Two hundred fifty Dollars ($250) to be paid to the said obligees, and for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our successors, heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated the 24th day of April, 1926.

Whereas, lately in the District Court of the United States, in and for the District of Indiana, in a suit pending in said court, the said court between the said Bedford Cut Stone Company, and its co-plaintiffs hereinabove named, and Journeymen Stone Cutters Association of North America, and its co-defendants hereinabove named, as defendants, a final decree was entered against the said Bedford Cut Stone Company and its co-plaintiffs, ordering that the Bill of Complaint in said cause be dismissed for want of equity
72 and the said Bedford Cut Stone Company and its co-plaintiffs, having obtained an appeal and filed copy thereof in the Clerk's office of said Court, to reverse the said order in the aforesaid suit and a citation directed to said Journeymen Stone Cutters Association of North America and its co-defendants citing and admonishing them to be and appear at the session of the United States Circuit Court of Appeals for the Seventh Circuit to be holden in the City of Chicago on the ..... day of ..... next.

Now, the condition of the above obligation is such that if said Bedford Cut Stone Company and its co-plaintiffs shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

Witness Our Hands and Seals.

BEDFORD CUT STONE CO.
By CHARLES MARTINDALE,
Atty.

UNITED STATES FIDELITY & GUARANTY COMPANY,
Baltimore, Md.
By LOUIS W. WITTE,
Attorney-in-Fact.

(Seal)

Approved by
(Signed) ROBERT C. BALTZELL,
District Judge.

221 (Entry for April 30, 1926 continued)

And said complainants also file praecipe for transcript for use on appeal, which praecipe is as follows: Filed Ap 1926.

222 * * * * * *

PRAECIPE.

The Clerk is hereby requested to make a transcript of the entire record in this cause for appeal to the Circuit Court of Appeals for the Seventh Circuit, from the Final Decree entered herein April 21, 1926 finding the equities in favor of the defendants and dismissing the Bill of Complaint for want of equity, and to include in said transcript the Bill of Complaint, subpoenas to the defendants with the return of the Marshal thereon, the Answers, the Stipulation, the Narrative Statement of the Evidence, the Order Book entries and Final Decree, Petition for Appeal, Order of allowance thereof, Assignment of Errors, the Bond for Appeal, this Praecipe, and Citation with acknowledgment of service thereon.

CHARLES MARTINDALE
Solicitor for Appellants

We hereby acknowledge service of copy of the above Praecipe on us this 30th day of April, 1926.

FREDERICK A. VAN NUYS
Solicitors for Appellees

223 IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Indiana

I, William P. Kappes, Clerk of the District Court of the United States, for the District of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record according to the above and foregoing praecipe in the cause of Bedford Cut Stone Company, et al *vs.* Journeymen Stone Cutters Association of North America, et al No. 837 Equity.

I further certify that I have incorporated in said transcript the original narrative statement of the evidence and the original citation as the same appears of record in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 10 day of May, 1926.

WILLIAM P. KAPPES,
(Seal) *Clerk.*

r. 30. 73 And afterwards towit at the November Term of said Court on the 30th day of April, 1926, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, towit:

Come now the complainants by their solicitor and files citation duly acknowledged, which citation is as follows:

74 CHANCERY

United States of America To Journeymen Stone Cutters Association of North America; Michael W. Mitchell, individually and as President of the Journeymen Stone Cutters Association of North America; Joseph Blasey, individually and as Secretary and Treasurer of Journeymen Stone Cutters Association of North America; George Taylor, Arthur MacPherson, William J. Hagan, James A. Gowen, Alex MacDougall, Joseph Wall, James Taylor, Alex Taylor, James L. Smith, each and respectively, individually and as constituting the General Executive Board of Journeymen Stone Cutters Association of North America;

Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; George Givens, individually and as President of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Patrick J. Murphy, individually and as Corresponding Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Lloyd Hoopingarner, individually and as Financial Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Bedford Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Oscar Peters, individually and as Corresponding Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; William Bahr, individually and as Financial Secretary of Bedford, Indiana Machinemen's local, Journeymen Stone Cutters Association of North America, Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Henry Beard, individually and as President of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; W. P. Stein, individually and as Secretary of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Bloomington Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Thomas Rush, individually and as Secretary of Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America; Charles H. Goodall, individually and as Secretary of Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America; Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America; Dean Acuff, individually and as Secretary of Stinesville, Indiana Local, Journeymen Stone Cutters Association of North America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago thirty days after the date hereof, pursuant to an appeal which has been allowed by the District Court of the United States for the District of Indiana, from its final decree in a suit wherein Bedford Cut Stone Company, The Central Oolitic Stone Company, the

Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company, The Hoosier Cut Stone Company, are Appellants and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellant as in the said appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness The Honorable Robert C. Baltzell, Judge of the District Court of the United States for the District of Indiana, this 29 day of April in the year of our Lord, one thousand nine hundred and Twenty six.

ROBERT C. BALTZELL,
Judge.

We hereby acknowledge service of the within citation by delivery of copy thereof to us the 30th day of April, 1926.

FREDERICK VAN NUYS,
Attorney for Appellees.

(Endorsed) Filed Apr 30 1926 William P. Kappes, Clerk

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 200, inclusive, contain a true copy of the printed Record, printed under my supervision and filed May 12, 1926, on which the following entitled cause was heard and determined:

Bedford Cut Stone Company, *et al.*

vs.

Journeymen Stone Cutters Association of North America No. 3774, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-ninth day of May, A. D. 1926.

(Seal)

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the sixth day of October, 1925, of the October Term in the year of our Lord one thousand nine hundred and twenty-five and of our Independence the one hundred and fiftieth.

And afterwards, to wit: On the fourteenth day of May, 1926, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Friday, May 14, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.

Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone

Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company, The Hoosier Cut Stone Company,

3774 *vs.*

Journeymen Stone Cutters Association of North America; Michael W. Mitchell, individually and as President of the Journeymen Stone Cutters Association of North America; Joseph Blasey, individually and as Secretary and Treasurer of Journeymen Stone Cutters Association of North America; George Taylor, Arthur MacPherson, William J. Hagan, James A. Gowen, Alex MacDougall, Joseph Wall, James Taylor, Alex Taylor, James L. Smith, each and respectively, individually and as constituting the General Executive Board of Journeymen Stone Cutters Association of North America; Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; George Givens, individually and as President of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Patrick J. Murphy, individually and as Corresponding Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Lloyd Hoopingarner, individually and as Financial Secretary of Bedford, Indiana Local, Journeymen Stone Cutters Association of North America; Bedford Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Oscar Peters, individually and as Corresponding Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; William Bahr, individually and as Financial Secretary of Bedford, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America, Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Henry Beard, individually and as President of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; W. P. Stein, individually and as Secretary of Bloomington, Indiana Local, Journeymen Stone Cutters Association of North America; Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Thomas Rush, individually and as Secretary of Bloomington, Indiana Machinemen's Local, Journeymen Stone Cutters Association of North America; Elletsville, Indiana Local, Journeymen Stone Cutters Asso-

ciation of North America; Charles H. Goodall, individually and as Secretary of Ellettsville, Indiana Local, Journeymen Stone Cutters Association of North America; Stinesville, Indiana Local, Journeymen Stone Cutters of North America; Dean Acuff, individually and as Secretary of Stinesville Indiana Local, Journeymen Stone Cutters Association of North America.

Appeal from the District Court of the United States for the District of Indiana.

Now this day come the parties by their counsel, and upon stipulation and agreement in open court by Mr. Charles Martindale, counsel for appellants, and Mr. Frederick Van Nuys, counsel for appellees, this appeal is submitted to the court upon the briefs and arguments had upon the former appeal of the same cause from an order denying a preliminary injunction, the opinion in which case is reported in 9 Fed. (2) 40. The evidence brought up by the record is the same evidence which was before the court in the former appeal.

It is now here ordered, adjudged and decreed by this court, that the final decree dismissing the bill for want of equity be, and the same is hereby affirmed with costs per curiam.

Bedford Cut Stone Company, *et al.*
3774 *vs.*
Journeymen Stone Cutters Association of North America, *et al.*
} Appeal from the District Court of the United States for the District of Indiana.

MEMORANDUM.

The decree in this cause is entered upon the authority of Cause No. 3529, Bedford Cut Stone Company, *et al.* v. Journeymen Stone Cutters Association of North America, *et al.*, the opinion of this court in that cause being filed October 28, 1925, and reported in 9 Fed. (2) 40, which said opinion is in the following words and figures, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 3529. October Term and Session, 1925.

Bedford Cut Stone Company, *et al.*, *Appellants*,
vs.
Journeymen Stone Cutter's Association of North America, *et al.*, *Appellees.*

Appeal from the District Court of the United States for the District of Indiana.

October 28, 1925.

Before ALSCHULER, EVANS and PAGE, *Cir. JJ.*

ALSCHULER, *Cir. J.*

The appeal is from an order denying temporary injunction under substantially these facts: Appellants are various quarriers and fabricators of Indiana limestone, a building stone found in large quantities in the district about Bedford and Bloomington. Appellees are the Stone Cutters' Association of North America, a labor union, and its officers, who, for many years prior to 1921, had contracts with these employers whereunder only members of the union were employed for cutting the stone after it was quarried. In 1921 the employers and the union failed to reach an understanding, and thereafter appellants employed non-union stone cutters in their works, forming them into an association, membership in which was required to obtain employment as stone cutters with these employers. Appellee union has local organizations in most of the states, largely in the principal cities of the country. Appellants' product is very large, and most of it is sent to nearly all parts of the United States for use in buildings. Some is shipped in rough or sawed blocks of convenient

sizes to be cut where sent, but most of it is, prior to shipping, partly cut for use in the different buildings, and the cutting is completed at place of building. Much of it is fully shaped and cut at or near the quarries, ready to be set into the buildings, but even this frequently requires some cutting at the building for more exact fitting.

After long negotiations, and failure to reach a new working agreement, the union officers ordered that none of its members should further cut stone which had already been partly cut by non-union labor; with the result that on certain jobs in different states stone cutters, who were members of the union, declined to do further cutting upon such stone. Where, as in some cases, there were few or no local stone cutters except such as belonged to the union, the completion of the buildings was more or less hindered by the order, the manifest object of which was to induce appellants to make a contract with the union for employment of only union stone cutters in the Indiana limestone district. It does not appear that the quarrying of stone, or sawing it into blocks, or the transportation of it, or setting it in the buildings, or any other building operation, was sought to be interfered with, and no actual or threatened violence appears, no picketing, no boycott and nothing of that character. The parties to the action reside in Indiana, and the sole ground of federal jurisdiction is the contention that appellees were conspiring to restrain interstate commerce, and that their conduct fell under the ban of the federal statute.

We are of opinion that under the facts appearing, appellees were within their rights in thus undertaking to induce members of their craft to refrain from further cutting upon stone which had before been partly cut by non-union labor, notwithstanding such refusal might have tended in some degree to discourage builders from specifying appellants' stone, and thus to reduce the quantity of their product which would enter interstate commerce. The tendency in greater or less degree thereby to restrain interstate commerce may be conceded, but so long as it does not appear that appellees resorted or threatened to resort to unlawful acts or means to accomplish their lawful purpose there was no impropriety in Judge Anderson's refusal to grant a temporary injunction, and his order denying same is accordingly affirmed.

The writer hereof, speaking for himself only, adds that, while it may be stating the same proposition somewhat differently, he is of the view that under the indicated facts inter-

state commerce within the purview of the statute is not here involved.

That the order to the union men to desist from further cutting such partly cut stone was to be operative in various states other than Indiana does not affect the question. It would be the same if all the cutting was done in that state, and the order effective there only. Under the stated facts the writer deems that this case falls fairly within the rule announced by the Supreme Court in *United Mine Workers of America* v. *Coronado Coal Co.* 259 U. S. 344 and *United Leather Workers Union* v. *Herkert & Meisel Trunk Co.* 265 U. S. 457, as well as by this court in *Danville Local Union et al.* v. *Danville Brick Co.* 283 Fed. 909.

It is contended for appellants that the holding of the Supreme Court in the second Coronado case (opinion filed May 25, 1925) requires the conclusion here that this asserted conspiracy is in restraint of interstate commerce. In that case the court found there was new evidence appearing on the second trial tending to show that one of the very purposes of the extensive destruction of mines and other property, and of killing and injuring persons, was to prevent the large capacity of the mines destroyed, and other mines there, from entering into competition with the product of union operated mines in neighboring states. No evidence of any such purpose or conduct here appears, nor of any purpose to restrain commerce. Wherefore the writer is of opinion that the District Court was in any event without jurisdiction to grant the demanded injunction.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 203 to 208 inclusive, contain a true copy of the proceedings had and papers filed in the case of

Bedford Cut Stone Company, *et al.*

vs.

Journeymen Stone Cutters Association of North America, *et al.*

No. 3774, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-ninth day of May, A. D. 1926.

(Seal)

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
OCT 27 1926
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 12[redacted] 412

BEDFORD CUT STONE COMPANY, et als.,
Appellants,

vs.

JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als.,
Appellees.

MOTION TO ADVANCE.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Solicitors and Attorneys for Appellants.

The Rieck Press, 87 Warren St., N. Y. Tel. Walker 1620.

Supreme Court of the United States

BEDFORD CUT STONE COMPANY, et als., Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Appellees.	October Term, 1926. No. 1255.

To the Honorable the Supreme Court of the United States:

Come now the Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Interstate Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company and The Hoosier Cut Stone Company, by Daniel Davenport, Charles Martindale and Walter Gordon Merritt, their counsel, and move that the above entitled cause be advanced and set down for argument at an early date, for the reasons hereinafter set forth.

Statement of Matters Involved.

This suit was commenced in the District Court of the United States for the District of Indiana on or about October 6, 1924.

The petitioners (herein called complainants) are each of them producers of Indiana lime stone in the State of Indiana. The respondents (herein called defendants) are certain stone cutters unions and their officers, and particularly the Journeymen Stone Cutters Association of North America, composed of about 150 local unions situated in the different states of the United States.

The complaint alleges a combination and conspiracy to restrain the complainants' interstate trade and commerce by calling strikes of stone cutters working for building contractors on buildings in states outside of Indiana, because stone produced by the complainants in Indiana is being used on or in connection with said buildings. An injunction and damages is sought.

On November 13, 1924, the District Court denied complainants' motion for a preliminary injunction, and on October 28, 1925, the Circuit Court of Appeals for the Seventh Circuit, in an opinion reported 9 Fed. (2nd) 40, affirmed said order.

Subsequently, by stipulation, the case was submitted to the District Court for final hearing on the same record as that presented for a preliminary injunction, together with the answer. On this final record the District Court dismissed the bill on April 21st, 1926.

Thereupon complainants appealed to the Circuit Court of Appeals from said order of dismissal, which court, on May 14, 1926, affirmed *per curiam* the judgment of dismissal.

The principal question involved is whether the alleged combination constitutes a violation of the Sherman Anti-Trust Law. There is no substantial dispute of facts.

The evidence shows that the Indiana producers operated on a union basis until about May 1, 1921, at which time the producers and the unions were unable to reach an agreement for future operation. The producers thereupon reorganized their producing forces, and the defendants, in order to compel unionization, undertook to enforce a union rule throughout the United States to the effect that members should not be allowed to work *on material* "cut by men working in opposition" to the union. Accordingly, complainants' customers suffered from strikes on buildings in various states where complainants' products were being used, and a general proscription of complainants' products by this means was threatened. Union representatives stated, in substance, that the purpose was to induce the complainants to unionize by forcing the contractors (complainants' customers) all over the country to refrain from using petitioners' products.

The evidence clearly shows that enforcement of the rule of the unions is applied at the point of delivery and use of petitioners' products in states other than the state of production for the avowed purpose of restraining such delivery and use.

The question of law is similar to the question presented in the case of *Brims* v. *United States*, 6 Fed. (2nd) 98, wherein the same Circuit Court of Appeals reversed a conviction for violation of the Anti-Trust Law. The *Brims* case is now No. 212 on the docket of this court, where it was brought by writ of certiorari, granted on motion of the United States.

In the *Brims* case it appeared—as in the case of *Paine* v. *Neal*, 244 U. S. 459—that agreements between the carpenters' union and certain contractors in Chicago per-

mitted the union workmen to discriminate against non-union woodwork, with the result that interstate shipments thereof from Oshkosh, Wisconsin, to Chicago, declined. The Circuit Court of Appeals found that the indictment charged an obstruction of commerce, but the proof merely disclosed an agreement not to work on non-union woodwork, and no intent to restrain interstate trade.

Reasons in Support of Application.

1. The appellants' business is without protection and is suffering irreparable damage from the acts of the defendants.

2. The case of *Brims* v. *United States*, No. 212, is already before this court, the briefs having been filed, and will be heard in the near future. The issues in that case are so similar to those presented in the case at bar that a decision in that case might foreclose the appellants hesein on the principal issue. The appellants therefore desire to be heard before the *Brims* case is decided.

3. The question involved is one of great public interest because similar situations are arising in other industries, and because the appellants' annual sales are about $15,000,000.

WHEREFORE the appellants respectfully pray that this case be advanced for an early hearing.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Solicitors and Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

BEDFORD CUT STONE COMPANY, et als., Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Appellees.	October Term, 1926. No. 1255.

To the Appellants and
FREDERICK VAN NUYS,
American Bank Building,
Indianapolis, Indiana:

You and each of you will please take notice that on Monday, November 1, 1926, at the opening of court on that day, or as soon thereafter as counsel can be heard, the appellants will move the Supreme Court of the United States to advance the hearing of the above entitled cause.

New York City, October , 1926.

Yours, etc.,

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Appellants.

Service of a copy of the foregoing petition and notice acknowledged this day of October, 1926.

FILE COPY

FILED
MAY 28 1926
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1925.

No. ~~[illegible]~~ 412.

BEDFORD CUT STONE COMPANY, et als.,

Petitioners and Appellants,

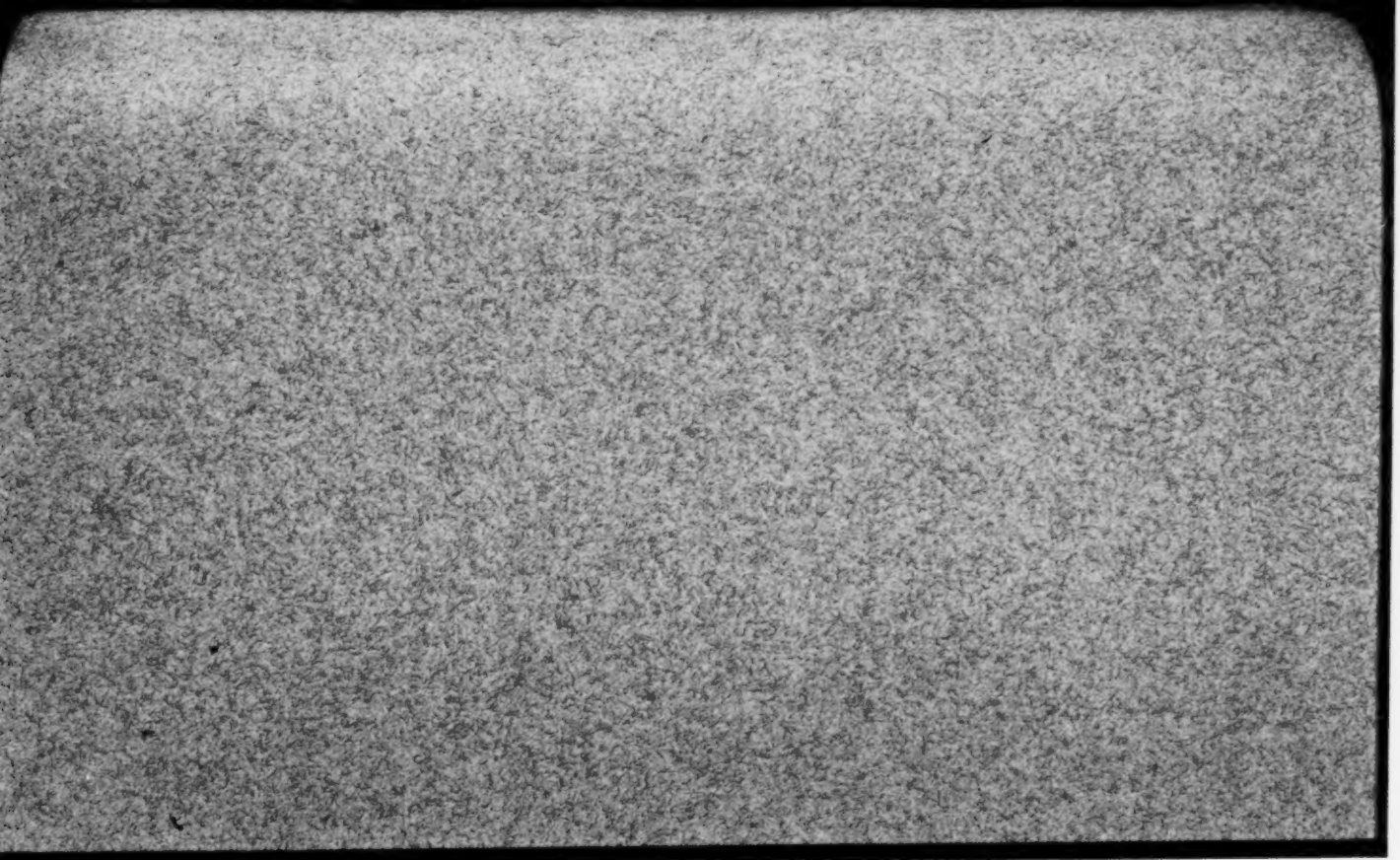
against

JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als.,

Respondents and Appellees.

APPLICATION AND PETITION FOR WRIT OF CERTIORARI.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Petitioners.



Supreme Court of the United States

BEDFORD CUT STONE COMPANY, et als., Petitioners and Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Respondents and Appellees.	October Term, 1925.

Come now the Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company and The Hoosier Cut Stone Company, by Daniel Davenport, Charles Martindale and Walter Gordon Merritt, their counsel, and move this Honorable Court that it shall by

certiorari, or other proper process, directed to the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, require said Court to certify and remove into this Court for its review and determination a recent cause in said United States Circuit Court of Appeals, lately pending, wherein the petitioners were appellants and the respondents were appellees, and to that end it now tenders herewith its petition, with a certified copy of the entire record in said cause.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES.

BEDFORD CUT STONE COMPANY, et als., Petitioners and Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Respondents and Appellees.	October Term, 1925.

Petition for a Writ of Certiorari.

To be addressed to the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioners, the Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company and The Hoosier Cut Stone Company, respectfully show to the Court as follows:

This suit was commenced in the District Court of the United States for the District of Indiana on or about October 6, 1924.

The petitioners (herein called complainants) are each of them producers of Indiana lime stone in the State of Indiana. The respondents (herein called defendants) are certain stone cutters unions and their officers, and particularly the Journeymen Stone Cutters Association of North America, composed of about 150 local unions situated in the different states of the United States.

The complaint alleges a combination and conspiracy to restrain the complainants' interstate trade and commerce by calling strikes of stone cutters working for building contractors on buildings in states outside of Indiana, because stone produced by the complainants in Indiana is being used on or in connection with said buildings. An injunction and damages is sought.

On November 13, 1924, the District Court denied complainants' motion for a preliminary injunction, and on October 28, 1925, the Circuit Court of Appeals for the Seventh Circuit, in an opinion reported 9 Fed. (2d) 40, affirmed said order.

Subsequently, by stipulation, the case was submitted to the District Court for final hearing on the same record as that presented for a preliminary injunction, together with the answer. On this final record the District Court dismissed the bill on April 21st, 1926.

Thereupon complainants appealed to the Circuit Court of Appeals from said order of dismissal, which, court on May 14th, 1926, affirmed per curiam the judgment of dismissal.

The principal question involved is whether the alleged combination constitutes a violation of the Sherman Anti-Trust Law. There is no substantial dispute of facts.

The evidence shows that the Indiana producers operated on a union basis until about May 1st, 1921, at which time the producers and the unions were unable to reach an agreement for future operation. The producers thereupon reorganized their producing forces, and the defendants, in order to compel unionization, undertook to enforce a union rule throughout the United States to the effect that members should not be allowed to work *on material* "cut by men working in opposition" to the union. Accordingly, complainants' customers suffered from strikes on buildings in various states where complainants' products were being used, and a general proscription of complainants' products by this means was threatened. Union representatives stated, in substance, that the purpose was to induce the complainants to unionize by forcing the contractors (complainants' customers) all over the country to refrain from using petitioners' products.

The evidence clearly shows that enforcement of the rule of the unions is applied at the point of delivery and use of petitioners' products in states other than the state of production for the avowed purpose of restraining such delivery and use.

The question of law is similar to the question presented in the case of Brims v. United States, 6 Fed. (2d) 98, wherein the same Circuit Court of Appeals reversed a conviction for violation of the Anti-Trust Law. The Brims case is now No. 719 on the docket of this court, where it was brought by writ of certiorari, granted on motion of the United States.

In the Brims case it appeared—as in the case of Paine v. Neal, 244 U. S. 459—that agreements between the carpenters' union and certain contractors in Chicago permitted the union workmen to discriminate against non-union woodwork, with the result that interstate shipments thereof from Oshkosh, Wisconsin, to Chicago, declined.

The Circuit Court of Appeals found that the indictment charged an obstruction of commerce, but the proof merely disclosed an agreement not to work on non-union woodwork.

Reasons in Support of Petition.

Your petitioners submit, in support of their petition, the following reasons and arguments:

(a) The issues involved are so similar to those presented in the case of Brims v. United States that a decision in that case, without consideration of this case, might be prejudicial. In order to make it possible for this court to consider both of these cases at or about the same time, if this application is granted, petitioners will move to advance.

(b) The record shows that the United States Circuit Court of Appeals did not attempt thoroughly to pass upon the merits, but based its conclusion on its decision rendered in connection with the preliminary injunction, where the majority of the court merely held that the refusal of the *preliminary* injunction was not improper.

(c) We submit the case at bar is controlled by the decision of this court in Duplex Printing Press Co. v. Deering, 254 U. S. 443, which decision is not mentioned in the opinion of the United States Circuit Court of Appeals. Notwithstanding the fact that the interference in question was with the sale, distribution and installation of products in interstate commerce, the Circuit Court of Appeals relied upon cases holding that interference with production did not constitute a combination in violation of the Sherman Anti-Trust Law.

(d) The question involved is one of great public interest, and the complainants' annual sales are about $15,000,000. The erroneous decision of this Circuit Court of Appeals will cause confusion, strife and loss.

(e) The question at issue is one which could have been brought before this Court as a matter of right prior to the Act of February 13, 1925.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court to the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, commanding them to certify and remove the said bill of complaint and all proceedings therein into this Honorable Court, and to stand to and abide by such order and direction as to your Honors shall seem meet and the circumstances of the case require, and that petitioners may have such other and further relief or remedy in the premises as to this Court may seem proper.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Solicitors and Attorneys for Petitioners.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WALTER GORDON MERRITT, being duly sworn, says that he is one of the solicitors and attorneys for the petitioners above named; that he has read the foregoing and annexed petition, and knows well the contents thereof, and he has also carefully read and studied the record in the case of Bedford Cut Stone Company, et als., appellants, against Journeymen Stone Cutters Association of North America, et als., appellees; that the matters of fact stated in said petition in respect to the record are fully supported in and by said transcript of record, and are true to his knowledge, information and belief.

WALTER GORDON MERRITT.

Subscribed and sworn to before me
this 26th day of May, 1926.

JANE RICHARDS,
Notary Public,
Westchester County.
Cert. filed in N. Y. Co. No. 863, Reg. No. 7063.
Cert. filed in Kings Co. No. 115, Reg. No. 7388.
Cert. filed in Queens Co. 2380 and Nassau Co.
Commission expires March 30th, 1927.

This petition is not intended for delay, and, in our opinion, is well founded in law.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. .

BEDFORD CUT STONE COMPANY, et als.,
Petitioners and Appellants,

vs.

JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als.,
Respondents and Appellees.

To

FREDERICK VAN NUYS,
American Bank Building,
Indianapolis, Indiana,
Counsel for Respondents.

Sir:

You are hereby notified that a petition for a writ of certiorari in the above entitled cause was filed in the Supreme Court of the United States on the 27th day of May, A. D. 1926. A printed copy of the record and a printed copy of the petition and brief are served upon you herewith.

New York City, May 27, 1926.

Yours, etc.,

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Bedford Cut Stone Company, et als., Petitioners.

Service of a copy of the foregoing petition and notice acknowledged this day of May, A. D. 1926.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1926.

No. 412

BEDFORD CUT STONE COMPANY, et al.,
Appellants,

vs.

JOURNEYMEN STONE CUTTERS' ASSOCIATION OF NORTH AMERICA, et al.,
Appellees.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPELLANTS' BRIEF

DANIEL DAVENPORT, Esq.,
CHARLES MARTINDALE, Esq.,
WALTER GORDON MERRITT, Esq.,
Counsel for Appellants.

The Heela Press, 67 Warren St., N. Y. Tel. Walker 1490.

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Supreme Court of the United States

BEDFORD CUT STONE CO. *et al.*, Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA *et al.*, Appellees.	October Term, A. D. 1926.

APPELLANTS' BRIEF.

Complainants appeal from a final decree of the Circuit Court of Appeals, for the Seventh District Court, affirming an order of the District Court, for the District of Indiana, which dismissed the bill of complaint herein.

Twenty-four producers of Indiana limestone filed their verified bill of complaint in the District Court of Indiana in October, 1924, seeking an injunction and damages against the Journeymen Stone Cutters Association of North America and certain local stone cutters' unions, and certain of their officers. On November 13, 1924, the District Court denied a motion for a preliminary injunction. On October 28, 1925, the Circuit Court of Appeals affirmed the order (9 Fed. [2nd] 40). By stipulation (pp. 49-50) the affidavits on the preliminary injunction were made the testimony for final hearing. On April 21, 1926, the District Court dismissed the bill. On May 14, 1926, the Circuit Court of Appeals affirmed the dismissal (pp. 203-205) in reliance upon its previous decision in 9 Fed. (2nd) 40.

Brief Statement of Case.

Complainants' trade is 75 per cent. interstate. Down to 1921 they contracted with defendant unions as to the employment of men for the production of stone in the Bedford District of Indiana. In 1921, being unable to agree on a labor contract for the future, a strike followed. Complainants thereupon reorganized their working forces, established new and independent unions, and have since been producing stone under contracts with these new unions. Defendants now seek to compel complainants to breach existing labor contracts with the independent Bedford unions, and to resume the old relationship with the defendant unions; finding complainants' production forces beyond the reach of their activity, they have obstructed the distribution and installation of the complainants' products at widely scattered points in different States throughout the country by ordering their members in the employ of complainants' customers to strike against complainants' products.

Summary of Pleadings.

Par. 1. Describes corporate organization and business of each complainant and alleges that seven are merely quarriers and the other seventeen are both quarriers and contractors or merely contractors.

Ans.: Admitted.

Par. 2. Each complainant employs upwards of forty employees, has invested over $60,000 and makes annual sales of over $100,000. Over 75 per cent. of the sales of each are interstate. The aggregate investment is about $6,000,000 and the annual aggregate sales about $15,000,000.

Ans.: Admitted.

Par. 3. Complainants constitute all but three of the producers of cut stone in the Bedford-Bloomington District not working under agreement with the defendant union. Shea & Donnelly, one of these three, is not included as complainant because it already has an injunction from the District Court for the Eastern District of Missouri and from the District of Indiana enjoining acts of the same character as herein described, and because said company has been excepted from overt acts of the defendants by reason of said injunction.

Ans.: Substantially admitted, except it is denied that Shea & Donnelly injunction was granted on account of same acts as described in this case.

Par. 4. Defendant Journeymen Stone Cutters Association of North America, known as the "General Union" or "G. U.," is a voluntary association of 5,000 members, divided into 150 locals in different States, and engaged in occupations as stone cutters, planermen, lathemen, carvers, etc. Defendant local unions in the Bedford District are also described and the official connections of the individual defendants.

Ans.: Admitted that "General Union" is a voluntary association composed of a total membership of about 3,000 and 150 local unions situated in the United States, as per list annexed to the Answer, and that the members are engaged in the crafts described. The citizenship, residence and official positions of each of the defendants is admitted as alleged.

Par. 5. The G. U. claims that employees of the complainants working at the occupations over which the union claims jurisdiction are working in opposition to the G. U., and that such workmen, their employers and their products are unfair. The sole basis for said claim is that said employees are not members of the G. U.

Ans.: Deny that they have ever called complainants or their employees or products "unfair" or have circulated lists to that effect, but admit that they refuse to work upon complainants' products made by laborers eligible to membership in the defendant unions.

Par. 6. Amount in dispute as to each complainant exceeds $5,000, exclusive of interest and costs.

Ans.: Denied.

Par. 7. None of the defendants have been employed by the complainants and none of the complainants have had any contractual relations with defendant unions for over three years.

Ans.: Substantially admitted.

Par. 8. Indiana limestone is quarried and fabricated for construction purposes. The process of quarrying consists in cutting the stone from the earth, and most of the quarries thereafter saw it into appropriate sizes, and part of them plane it. Part of the stone is shipped to buildings where it is fitted, trimmed, and set in place, and the balance is sold to contractors to be fabricated.

Ans.: Admitted.

Par. 9. Cut stone contractors fabricate the stone after it is quarried, which is the process of planing, cutting, carving, lathe turning, etc., and they secure the rough stone either from their own quarries or by purchase from others.

Ans.: Admitted.

Par. 10. Each of the complainants who are quarriers employ sawyers, and each of them, except the Crescent, Empire, Mathers, Monroe County and Star, employ planermen, lathemen and other classes of workmen over which

the defendant union claims jurisdiction. The cut stone contractors employ planermen, lathemen and stone cutters over which the union claims jurisdiction.

Ans.: Admitted.

Par. 11. About 75 per cent. of complainants' product is sold in the rough, or semi-finished state, to stone contractors and requires the services of lathemen, planermen, stone cutters, carvers and also fitters at the building to make it salable and usable. Twenty-five per cent. of the product of the complainants is fabricated by complainants who are contractors, and thereafter sold to builders, owners and architects for building construction, but such fabricated stone requires the services of stone cutters and fitters at the building before it can be utilized. All of the rough stone is sold as a commodity, and complainants do not assume any obligation for further fabrication or installation, but merely supply the material wherewith the purchaser does such work.

Ans.: Neither denied nor admitted.

Par. 12. Eighty per cent. of the total output of Indiana limestone is produced by complainants and Shea & Donnelly, and about 20 per cent. by so-called union concerns working under agreement with the defendant union. About 98 per cent. of complainants' product is sold to customers outside of the State of Indiana. About 75 per cent. of the product of complainants' quarries is sold in the rough, sawed or semi-finished, to stone contractors outside of Indiana, and about 25 per cent. is finished by the quarrymen or sold to contractors, complainants herein, and 98 per cent. of the products of complainant contractors is sold in interstate commerce.

Ans.: Neither denied nor admitted.

Par. 13. Indiana limestone is produced exclusively in the Bedford-Bloomington District, and the total output is about 12,000,000 cubic feet, having a market value of $20,000,000, of which Shea & Donnelly produce about 5 per cent.

Ans.: Admitted.

Par. 14. Said limestone comes into interstate competition with the product of union quarriers and contractors which produce about 20 per cent. of the total, and also with other kinds of natural stone and substitutes like artificial stone which is produced in unionized concerns working under agreement with the stone cutters' union. One of the purposes of the combination herein set forth is to force purchasers to substitute the products of the union concerns or other kinds of materials for complainants' products.

Ans.: Admits that the competition exists and that the principal producers of artificial stone are unionized and are located outside of Indiana.

Par. 15. Prior to 1921 complainants were working under written agreement with the defendant union, which with certain extensions expired April 31, 1921, and since then have been operating under agreements with unions having no affiliation with defendant unions, which agreements do not expire until some time in 1925 and 1926 respectively. Since 1921 there has not been any dispute or strike between complainants and their employees and their unions, and they are all working on a basis of mutual satisfaction.

Ans.: Admitted, except as to the expiration dates of the agreements between complainants and their employee unions. Also alleged that said unions are owned by complainants.

Par. 16. Most of the stone cutters throughout the United States outside of Indiana, and particularly in the largest industrial centers, are members of the G. U., and in most of these centers building construction is conducted on the closed shop basis, where it is the practice of all trades to join in sympathetic strikes against the employment of non-union men in any trade. The business of over half of the stone contractors outside of Indiana is on a closed shop basis, employing members of the defendant unions exclusively.

Ans.: The practice of sympathetic strikes is denied, and it is alleged that only one-fifth of stone contractors are unionized, and denied that contractors cannot do business without consent of union, but the allegations of this paragraph of the complaint are otherwise admitted.

Par. 17. The stone cutters' union and its officers and members are engaged in a combination to prevent the complainants from selling their product in interstate commerce because they do not agree to employ members of said union exclusively, and also knowingly and wilfully to coerce complainants to breach the agreements under which they now operate with their employees.

Ans.: Denied.

Par. 18. In furtherance of said conspiracy, defendants have done the following:

A. They have inserted a provision in the union constitution that any member working on stone cut by men working in opposition to the union shall be automatically suspended, and they advertise that the employees of the complainants are so working in opposition to the union.

Ans.: The constitution provision is admitted.

B. They have written notices to customers or complaints that no union members will work on stone not recognized as fair, meaning complainants.

Ans.: Denied.

C. They have declared orally and in writing that complainants and their product are unfair because worked on by men working in opposition to the union, and have published circulars and lists of producers which, expressly or by implication, classify complainants as unfair, and they have threatened that any architect, building contractor or owner who attempts to purchase or use complainants' materials will suffer labor troubles through a strike of stone cutters employed by them on buildings or in shops where said materials are to be further fabricated or used.

Ans.: Denied, except that defendants admit they have "declared that stone unfair which is produced by complainants by labor eligible to membership in the defendants' unions."

D. They have instigated and joined in and have threatened to instigate and join in strikes of stone cutters and other craftsmen on buildings in States outside the State of Indiana because materials of complainants were there being used.

Ans.: Admit only that they have "simply refused to work upon that class of stone."

E. They have instigated and joined in and have threatened to instigate and join in strikes of employees of cut stone contractors and carvers who attempted to have work done upon stone produced by complainants.

Ans.: Admit only that they "have simply ordered members of the defendant unions to cease work upon such class of stone."

F. They are attempting by strikes and the fear thereof to compel purchasers and prospective purchasers to refrain from purchasing materials of complainants.

Ans.: Denied.

G. They are attempting wilfully to induce and compel complainants to violate and breach contracts under which they are working with their present employees and their unions.

Ans.: Denied.

H. They have attempted to induce employees, contractors and carvers to breach contracts to work on products of complainants.

Ans.: Denied.

I. On July 7th the International Union issued a notice to all local unions and members, effective August 1, 1924, directing its members not to work on stone "that has been started—planed, turned, cut or semi-finished—by men working in opposition to our organization." The order further stated that a convention of the union had laid down the rule that the "members were to rigidly enforce the rule to keep off all work started by men working in opposition to our organization, with the exception of the work of Shea-Donnelly, which firm holds an injunction against our association."

Ans.: Admitted.

J. Complainants have outstanding contracts for the sale of stone which are placed in jeopardy by reason of these acts, and within the last few weeks interferences have taken place with the fabrication, carving and installation of stone in the States of Colorado, Illinois, New Jersey, Minnesota, Michigan and Indiana, and the president of the G. U. has announced that the rule against handling stone produced by complainants is to be promptly enforced in every part of the country without discrimination, except as to Shea & Donnelly, which is working under protection of an injunction.

Ans.: Denied, except it is admitted "that the president of said general unions has announced that the rule against handling of that class of stone, herein repeatedly described and produced by complainants is to be promptly enforced in every part of the country."

Par. 19. Customers who otherwise would purchase complainants' products are deterred from doing so for fear of strikes in their establishments or building operations, with the result that complainants have each of them been similarly and irreparably injured in excess of $5,000, exclusive of interest and costs.

Ans.: Denied.

Summary of Important Admissions.

Prior to 1921 complainants worked under a written agreement with the defendant union, and since then have been operating under agreements with unions having no affiliation with the defendants, and there has been no strike or dispute between them or their employees.

None of the complainants employ any of the defendants, and none of them have had contractual relations with the defendant unions for over three years.

The defendants have written a provision into their constitution as follows: "No member of this Association shall cut, carve, or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended." Defendants further admit that they have "declared that stone *unfair* which is produced by complainants by labor eligible to membership in the defendant unions"; that they have "refused to work upon that class

of stone"; and that they have "ordered members of the defendant unions to cease working upon such class of stone."

They admit also the issuance, on July 7, 1924, of a letter addressed to all the local unions and members of the General Union, stating that, after August 1, 1924, the members are "to refrain from working on any work that has been started—planed, turned, cut, or semi-finished—by men working in opposition to our organization," with the exception of Shea & Donnelly. This circular further stated that the previous convention of the union had given the members permission to work on such material in order to bring about a settlement with complainants, but upon the understanding that, if there was no settlement, "our members were to rigidly enforce the rule to keep off all work started by men working in opposition to our organization, with the exception of the work of Shea-Donnelly, which firm holds an injunction against our Association." It is further admitted "that the President of said General Union has announced that the rule against handling of that class of stone herein repeatedly described and produced by complainants is to be promptly enforced in every part of the country."

Most of the stone cutters working on buildings throughout the United States, outside of Indiana, where this product is used, are members of the defendant union, and, in most industrial centers, building construction is conducted on the closed shop union basis.

Evidence Not Covered by Admissions in Answer.

The Official Journal of the stone cutters (p. 51) shows that determined efforts are being made to enforce this rule against complainants (pp. 52-61). The president reports that "we still find our men working on scab cut stone

that comes in from the Belt in these same localities. Now this condition has to stop" (p. 52). "There will be some cards revoked if this condition continues" (p. 52). "All hands off scab cut stone" (p. 52). "We are pleased to note that several locals have complied with the request asked of them to refrain from working on unfair cut stone, and they are only living up to their constitution, which is nothing more than we expect from every local and every individual member of the general union" (p. 53). "The law itself states very plain the penalty for any member violating this law. So refuse to work on stone started by men working in opposition to you" (p. 53). "In March Journal we again called attention to our men working on scab stone and tried to make it as plain as possible so no one could say he had not seen the order or did not understand it" (p. 54). "I went there and addressed our members in joint session on the conditions in the Indiana Belt and the result of our men working on scab stone. They agreed to abide by the order to refuse to work on scab stone" (p. 55). "I told them in person that they could not start carving jobs where the stone cut and planed was done by men working in opposition to our Association" (p. 55). "Again in the April Journal you will note I warned the membership against working on scab cut stone" (p. 55). "I stopped at Baltimore to make plain the organization's stand on men working on scab cut stone, to both the employers and the men" (p. 55). "I went to Louisville, Kentucky, where a special meeting was called, and I addressed our members on general conditions and the stand taken by our Association on scab cut stone" (p. 55). "You will lose that card just as soon as you are found violating the Board's order" (p. 58). "We are ready and willing to stop any of our members that are found violating the general order from the Executive Board" (p. 60).

The final order against working upon this material

started first with the instructions of the October, 1923, Convention of the International Union to stop members working on complainants' material unless an agreement was secured (p. 175). Failing this agreement, the Executive Committee on June 27th directed that action be taken, and on July 7th the order set forth in the complaint (par. 18, subd. H) was issued, to take effect August 1, 1924 (pp. 175-176, 59-60).

Instances of Interference.

The record gives illustrations of difficulties caused customers of complainants by enforcement of the union order forbidding its members from handling complainants' products (pp. 61-157).

Among the places where trouble has arisen on account of the defendants' combination are Chicago (pp. 70-81, 145-147, 156-157, 112), Denver (pp. 83-144), Lansing, Michigan (pp. 150-154), Atlantic City (pp. 61-62), Cleveland, Ohio (p. 112), Harrisburg, Pa. (pp. 63-64), Elgin, Illinois (pp. 145-146), Tulsa, Oklahoma, and Battle Creek, Michigan (p. 112), Kokomo (pp. 81-83, 148-149), Upland, Peru (p. 149), Valparaiso (p. 155), Muncie and Indianapolis, Indiana (p. 112). These instances show attacks upon the complainants' products as "unfair" or "scab."

That the direct, necessary and intended effect of the activities of the Union, its members and officers in this matter was to restrain the interstate trade of the complainants is shown by the contemporaneous declarations of the president in the May journal, 1924 (Record, p. 56), as follows:

> "The natural stone industry needs all the natural advantages it can possibly get, as there are so many kinds of substitutes to take the natural stone's place in the building material market, that it behooves the natural stone employers to do their

> utmost to see that *no handicap* is in its way, and *it is a well known fact* that when *any material is known to have labor grievances,* it *retards that material in the building market, as the building public do not want the stigma on their building that it was built by 'unfair labor,'* and they are also *afraid of stoppage of work and unnecessary disputes while their building is in course of construction,* and no one can blame them for that."

And again (Record, p. 55):

> "I went to New York City, and went to see a few *carving contractors,* myself and E. B. Member Wall; and I told them *in person* that they could not start carving jobs where the stone cutting and planing was done by men working in opposition to our association. One of them had a large job of carving at the time; but the job would not be ready for carvers for six months then."

That the expected results followed is shown in the testimony of B. P. Crowe, the general manager of W. McMillan & Son, complainant, one of the largest producers of this stone in the trade whose operations covered the entire country (Record, p. 149):

> "Affiant further says that in addition to the specific instances of interference with the work of the customers of this affiant's said company as hereinbefore mentioned, the salesmen for this company have reported that their customers and prospective customers have frequently expressed fear of *labor troubles* in case they purchased stone from this affiant's said company on account of the orders and actions of said general stone cutters' Union in refusing to work thereon and said conditions still exist."

Defendants' Testimony as to Purpose.

The objection is not to the *material per se*, but to the fact that it is made by rivals and its use will mean patronage and encouragement for complainants. The purpose is stated by the union officials in their testimony before the Colorado Industrial Commission, August 26, 1924, when considering a strike against a customer in Denver for purchasing material from one of these complainants (pp. 110-117).

This Colorado testimony by this official of the stone cutters' union relates to acts done in Denver in furtherance of the union order, effective August 1st, and included the following:

First, as to the reason for these strikes against customers:

> "A. No, sir, it is a fight between the stone cutters and the Bedford Stone Club, the bosses" (p. 114).
>
> "A. As I understand it, we have what we call unfair firms in the stone belts in Indiana. * * * We have never gotten an agreement with them; they refuse to meet with us, and at the 1921 Convention we decided to go ahead and cut this stuff, but it was understood that we were to come off of it when we were called off, but there was no date set when this call was to be made; it was generally supposed it would be the 1st of May of this year, but it wasn't. Our executive board met in Indianapolis in June and decided on August when we was to come off of this work" (p. 110).

The union attitude toward the local contractor, who is complainants' customer, is then discussed:

> "Q. In other words, it is an effort of your organization to kill the local organization (employer)? A. Yes, sir.

Q. In order to do that, you would force a man in Denver, with whom you had no trouble, to either go busted or quit employing union men? A. Well, that has been threshed out here before. It is generally understood we have nothing against this local man at all. We are only acting under orders from our International.

Q. He would either have to go broke on his contract or employ non-union men? A. Yes, sir.

Q. And there is no way he can fix it up with you, locally? A. No, sir; the local has no jurisdiction.

Q. Your committee met in June and decided to call this strike, you say? A. I think it was June" (p. 114).

Customers attacked in order to reach producers in other States:

"A. It affected the local man. We was trying to affect the Bedford people through the local man.

Q. That is, bust him up in business and make the Bedford man feel sorry about it? A. Not necessarily. I don't think the Bedford man would let him do that. I think the Bedford man would come to his rescue before he went busted" (p. 114).

"Q. So the only person injured would be your own local man, who is your employer, and your personal friend, is that it? A. In a way. If it was finished that way, he would be the only one hurt. We are not fighting on this Denver man. We are trying to force these people through the other subcontractors all over the country" (p. 115).

"Q. You are trying to force the Bedford to employ members of your union to do this work? A. Yes, sir.

Q. And irrespective of who it hurts, that is the object? A. That is the object. It is done from our headquarters.

Q. Mr. Fernald, or anybody else, they have got to get out of the road, that is the object? A. We are trying to gain this point, irrespective of who it hurts" (p. 117).

"Q. And you are going to stop work on that and you only injure him, is that correct? A. I expect that is correct, yes.

Q. And that is the impression you want to leave with me? A. It is like I said before, we are centering the fight against the Bedford people, and, of course, we are not working for them, personally. We can't go on the side against them, we can't walk out of their shop because there is none of our men in their shop.

Q. If Reilly hated you and went out and licked me, it would be a kind of a moral lesson to you, is that it; in other words, if there is any explanation of that situation from your standpoint, I want it? A. That is all.

Q. And you are willing to leave that impression stand that way with me? A. Yes, sir.

Q. If there is any explanation of that, I want it. A. Well, I don't know of any further explanation that I can make" (p. 116).

Local unions are forced by the International to so act:

"Q. To sum this up, Mr. James, here is the point, your people are members of this local union. The local union, of course, is under the jurisdiction of the International Union, and you have your orders from your International Union? A. Yes, sir.

Q. And you people have no choice in the matter, you are just complying with the orders from the International? A. We have no choice whatever.

Q. Probably, if it was let up to you people here, knowing this employer as you do, why, your organization here, local organization, would not strike on this man? A. I don't believe we would, no.

Q. But you have got to follow the orders of your International organization? A. Yes, sir" (p. 117).

Places where trouble has arisen:

> "Q. Do you know of your own knowledge whether members of your organization are out in other States? A. Yes, sir.
>
> Q. Have your people that information? A. Yes, sir.
>
> Q. Could you name some of the States where they have refused to work on account of this stone? A. They refused to work on it at Battle Creek, Michigan; Muncie, Indiana; Indianapolis, Indiana; Chicago, Illinois; Tulsa, Oklahoma; Cleveland, Ohio. Them is the places I have information from.
>
> Q. Did you get that information through your journal? A. No, sir, through personal correspondence with our International Secretary" (p. 112).

President Mitchell of the International Union also testified:

> "Q. What is the condition at the present time throughout the country in regard to this order? A. Our men are living up to this order; if they are not living up to this order I want the places pointed out and I will see that they do."

These activities do not constitute *local strikes* for *local purposes,* such as were involved in the *Herkert & Meisel* and *Coronado* cases, cited in the Court below. The sole purpose of causing strikes against customers upon buildings in cities outside of the State of Indiana was because those customers had purchased and were using complainants' "scab" and "unfair" products. Because of "a fight between the stone cutters and the Bedford Stone Club, the bosses" (p. 114), and because the unions call the complainants "unfair firms in the stone belts in Indiana" (p. 110), they "are centering the fight against the Bedford people" (p. 116). The defendants are "trying to force these people through the other sub-contractors all over the country" (p. 115) in order to compel them to employ

union men in Indiana, "and irrespective of who it hurts" (p. 117), and the entire membership and local unions are acting solely because they are forced to follow the orders of the International organization (p. 117). It was stated in the official journal of the union that union men in the stone belt in Indiana "are in no position to get their former employers to meet with them to consider drawing up an agreement, so they are dependent on their brother union men working on the outside where the unfair cut stone and semi-finished stone is shipped to" (p. 53). In another issue of the official journal, the officials reported that they had gone through the various towns in the Indiana stone belt district, assuring the union men there "that their Brothers in the outside locals were now going to support them by refusing to work on any scab cut stone coming from the Belt" (p. 54).

Thus we have a widespread artificial scheme, directed by a national organization, which requires all stone cutters employed *by complainants' customers*, everywhere in the United States, to strike against the unfair and scab products of the complainants. These strikes took place upon buildings or in shops to which the products are shipped in interstate commerce, and their purpose is not local, but to control the situation in another State through their interference with existing interstate trade.

POINT I.

Defendants' combination violates the Sherman Anti-Trust Law.

It is not necessary for complainants to show any common law combination to injure or maliciously interfere with their business.* On the contrary, they invoke the provisions of a drastic statute, whereunder every artificial barrier between producer and consumer, which obstructs interstate commerce, is condemned because it interferes with the rights of the purchasing public. This combination of the defendants, which follows the products of the complainants into various States and industrial centers for the purpose of burdening or hampering their use, comes squarely within the spirit and letter of this drastic law.

The Sole Direct Purpose is to Restrain Interstate Commerce.

The avowed purpose is to force complainants to resume contractual relations with defendant union for the production of stone at Bedford, Indiana. The only connection between these scattered points of consignment where the strikes take place, and the place of production, where all

* Under the common law, most courts have held combinations of this character to be illegal (*Purvis* v. *Local 500*, 214 Pa. 348, 63 Atl. 585; *Shine* v. *Fox Brothers Manufacturing Co.*, 156 Fed. 357 [C. C. A., 8th Cir.]; *Huttig Sash & Door Co.* v. *Fuelle*, 114 S. W. 1001 [Mo.]; *Irving* v. *Joint District Council*, 180 Fed. 896; *Newton* v. *Erickson*, 70 Misc. [N. Y.] 291; *People* v. *McFarlan*, 43 Misc. [N. Y.] 591; *Booth* v. *Burgess*, 65 Atl. [N. J.] 226; *Purington* v. *Hinchliff*, 76 N. E. 47; *Carlson* v. *Carpenters Contractors Association*, 303 Ill. 331; *Moores* v. *Bricklayers*, 21 Weekly Law Bulletin, Ohio, 665 [Taft, J.]; *Piano Workers* v. *Piano Co.*, 24 Ill. App. 35; *Loizeaux Co.* v. *Carpenters*, Union County, N. J., August, 1923), and a few others have held the contrary (*Parkinson* v. *Building Trades Council*, 98 Pac. 1027 [Cal.]; *Bossert* v. *Dhuy*, 221 N. Y. 342).

is peace and harmony and where defendants seek to force a change, is interstate commerce. How can the means adopted, viz., obstruction of fabrication and installation by customers, accomplish the avowed end of affecting conditions in the Indiana quarries, except by restraining commerce, and why do defendants adopt this means to attain this end, except they calculate and intend to restrain such commerce? If commerce did not exist between the point of production and the point of attack the defendants would not be doing as they are doing. The object of the attack is not the customers against whom they have no grievance, but the trade and commerce between those customers and complainants. It is not the material which is objectionable, but the fact that its use means encouragement and patronage for complainants and a continuance of their commerce.

It is not a case of incidental injury or restraint. Defendants frankly say they have exhausted the resources of argument, and are finally obliged to resort to this form of pressure. Having failed to destroy the productive organization they turned their attention to sales and distribution. The sole, direct and immediate purpose, whether you call it an end or a means, is to restrain trade, so that, as a secondary result, complainants will be forced to change production conditions. The defendants do not seek a benefit which incidentally restrains trade, but directly and unlawfully restrain trade in order to obtain a benefit as a secondary result. The benefits are to be obtained in Bedford only by the pressure of the injury caused through the unlawful restraint.

Along the channels of interstate commerce are dealers, contractors and others through whose hands goods must pass en route to the public. Attempts to penalize or hamper these dealers, if they purchase a prescribed class of

goods, deprives them of their freedom of choice and blockades the flow of these articles to the public markets. That is defendants' aim. They seek to cause a backwater of the normal current of commerce by the erection of barriers at the outlet of the stream, and rely upon the alarm and injury created by that backwater to dislodge complainants from their position.

The facts, no essential of which is contradicted, present a clear violation of the Sherman Anti-Trust Law under authorities which are indistinguishable.

> *Brims* v. *U. S.* (Supreme Court, Nov. 23, 1926).
> *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443.

The combination in the case at bar is fundamentally the same as the combination involved in the case of *United States* v. *Brims*, in which case, this Court reversed the Circuit Court of Appeals for the Seventh Circuit, and held the combination to be a violation of the Sherman Anti-Trust Law. In the *Brims* case, an arrangement was entered into between the carpenters and the producers of building trim in Chicago whereby the unions agreed not to work upon non-union trim, the purpose being to protect the local union producers and their union employees from the competition of the non-union mills paying lower wages. In the case at bar there is no proof offered as to the part which the union producers played in connection with the combination, but it clearly appears that the complainants' product competes with the union product and that the combination is acting for the purpose of benefiting both employers and employees in the union establishments, thereby making the union workers and the union producers, boycott-beneficiaries. Where the purpose and results are identical, it surely can make no difference, under the statute, whether the employer actively joins with his

employees in boycotting the non-union producers, or merely acquiesces and receives the benefits. It has long since been settled that the statute applies to combinations of workers as well as of employers (*Loewe* v. *Lawlor*, 208 U. S. 288), and the statute has been repeatedly applied to situations where the unions alone were active in prosecuting the boycott (*Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443).

The case of *Duplex Printing Press Co.* v. *Deering, supra*, is also based on certain fundamental facts which are present in this case: A combination of workers refusing to work on or in connection with certain commodities received through interstate commerce in order to force the unionization of a producer in another State.

There is no doubt that commerce can be unlawfully restrained by interfering with the product before it starts on its interstate journey, or after it arrives. This has been expressly held.

U. S. v. *Brims* (*supra*).
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.
Loewe v. *Lawlor*, 208 U. S. 274.
Boyle v. *U. S.*, 259 Fed. 803 (C. C. A., 7th Cir.).

The cases hold that the means of restraining trade may be otherwise lawful and innocent (see *Loewe* v. *Lawlor*, 208 U. S. 274, quoting *Aikens* v. *Wisconsin*, 195 U. S. 194). In the *Duplex* case the means were strikes against customers.

A good motive or an entire absence of malice is no defense if the object is to restrain commerce.

Thomson v. *Cayser*, 243 U. S. 66.
Sanitary Mfg. Co. v. *Missouri*, 226 U. S. 20.
Int'l Harvester Co. v. *Missouri*, 234 U. S. 199.

ATTACK IS ON COMMERCE AND NOT ON PRODUCTION.

For the purpose of argument, we concede that local restraint of, or interference with, production does not constitute a restraint of interstate commerce, even though the articles to be produced are destined for interstate commerce.

> *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344.
> *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457.

If the case at bar presented a local attack, on production, as, for instance, was the situation in 1921 when the strike was on between complainants and defendants, these cases might be applicable, but such is not the case. Complainants have an harmonious production organization which defendants are not now attacking, but instead defendants are following the products of this harmonious organization into the markets of the nation whither they have flowed through the current of interstate commerce and after they have been purchased and received by customers. That attack on the distribution of complainants' product, for the purpose of curtailing complainants' liberty to engage in such commerce, brings the facts within the cases of *Duplex Printing Press Co.* v. *Deering*, *Loewe* v. *Lawlor* and *U. S.* v. *Brims, supra*. The very case of *United Leather Workers* v. *Herkert & Meisel Trunk Co., supra,* relied on by the lower Court, clearly points this distinction:

> "In Loewe v. Lawlor, 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. Rep. 801, 15 Ann. Cas. 815, and in Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. Ed. 349, 16 A. L. R. 196, 41 Sup. Ct. Rep. 172, members of labor unions having a controversy with their employers *sought to embarrass the sale by their employers of the product* of their manufac-

> ture in other states by boycott and otherwise. They were held guilty of a conspiracy against interstate commerce because of their palpable intent to achieve their purpose by direct obstruction of that commerce."

See also:

Anderson v. *Shipowners* (decided Nov. 22, 1926).

We submit the attack in this case is not on production, but is on the interstate distribution, sales and commerce of the complainants by making unusable and unsalable the merchandise produced by the harmonious working organization of employers and employees at Bedford. This result is to be accomplished by hampering and obstructing customers in their attempted use of the purchased article. Here are all the elements of an interstate boycott in violation of the anti-trust laws.

POINT II.

The defendants are seeking breaches of contracts.

The complainants are working under employment contracts which expire in 1925 and 1926, and their relations to their employees are harmonious (par. 15, Complaint, p. 68). The defendants seek to have them throw over these contracts and substitute a contract with defendants. This is undenied. Such a combination to induce a breach of contract is unlawful.

> *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229.

Defendants have also induced breach of other contracts (pp. 78-80, 152), and are proceeding in utter disregard of the volume of outstanding contracts.

POINT III.

The complainants have not discriminated against defendants.

We submit this alleged defense is immaterial, but we deal with it at length because of the emphasis laid upon it by the defendants in the lower courts.

Down to April 30, 1921, the complainants operated under an agreement with the defendant unions. A disagreement arose in the spring of 1921 (p. 163), and, since the parties could not solve it, the producers issued a notice on March 21, 1921, stating the terms of employment which would prevail after the expiration of the agreement on May 1st (pp. 163-164). There is nothing in the notice which indicated any purpose to discharge union men, or to discontinue dealings with the union. If the union and its employee members were ready to continue on the basis stated, they could do so. Defendants say "that as a result of said action * * * all members of the said Journeymen Stone Cutters Association of North America were locked out" (p. 164).

As a matter of fact, although it is entirely immaterial, a lockout does not exist where the employer offers employment even though the terms thereof are unsatisfactory, but only where there is a complete shutdown and a refusal to employ anyone in order to force acceptance of employer's terms.

The definition of a lockout, according to the Standard Dictionary, is:

> "The shutting up of a manufactory or other place of business by the employers because of unwillingness of employees to work on terms satisfactory to the former."

See also:

Panzicri-Hogan Co., Inc., v. *Bender*, 205 App. Div. (N. Y.) 398, 199 N. Y. Supp. 887.
Matthews v. *People*, 202 Ill. 389.

Apparently it was not until this suit was started that defendants claimed there was a lockout.

In his testimony before the Colorado Industrial Commission, President Mitchell shows that it was a strike and not a lockout:

> "They refused to concede the thirty days and seemed to be very anxious to go to bat, as the term is, or a strike on the first of May. On the first of May, 1921, our men were out in most all the shops and in quite a few cities" (bottom of p. 121).

The affidavit of Drayer also supports this (p. 133):

> "On May first the union men were taken out of the shops and the operators proceeded as best they could to operate the shops."

The defendants' version as to what happened after May 1st also shows there was no "lockout" or closing up.

They show another bulletin sent out by the producers' association to its members, referring to the notice of March 21st, as prescribing conditions of employment which controlled after May 1st, and stating, "If your men are working, it must be emphatically understood that they are doing so under conditions named March 21st," etc. (p. 164).

This again shows that there was no discrimination against the union or its members down to that time, and that it was contemplated that some of the men might be "working * * * under conditions named March 21st."

About two months after the breach of May 1st the producers organized unions of their own employees and required all their employees to join them (pp. 167-170).

It was two and a half months after quitting work that the Bedford Stone Club is alleged to have issued a circular trying to keep the weak-kneed employers in line, and calling attention to the names of striking foremen (pp. 166-167).

It will be seen that none of these activities constituted a refusal to employ members of the defendant unions, but merely a requirement that all employees join the independent unions, just as employers might require employees to join an employee benefit association. The employee could also remain in the defendant union. Apparently the producers waited until the strike had continued about two months before they even took these affirmative steps to reorganize their place of business. It must also be noted that these acts, of which defendants complain, happened over three years before this suit was commenced, and that there is no suggestion of their continuance.

But, even if complainants did discriminate against union men, they were acting within their constitutional rights.

> *Adair* v. *United States*, 208 U. S. 161.
> *Coppage* v. *Kansas*, 236 U. S. 1.
> *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229.

In the case of *Hitchman Coal & Coke Co.* v. *Mitchell*, the Court went so far as to enjoin the union discriminated against from attempting by persuasion to induce employees to breach agreements not to join the union.

It is well settled that the exercise of this constitutional right of discrimination against union members does not curtail the complainants' right to restrain unlawful interference.

> *Gill Engraving Co.* v. *Doerr*, 214 Fed. 111.
> *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101.

The mere fact that a factory operates on an anti-union basis does not justify the union in question in denying that company "unrestrained access to interstate commerce," and the right to such access is not curtailed or limited by the failure of the employers to reach an agreement with the union in question. If the Government could enjoin the defendants under the anti-trust law, the complainants, who are injured by the acts in question, may likewise do so.

A reversal of the picture strengthens the argument. Let us assume that defendant union would not permit its members to work for complainants in the production of stone. Would the producers then be justified in concertedly refusing to sell stone in interstate commerce to any customer who gave a job to a member of defendant union? Would the producers' combination escape legal condemnation by paraphrasing the defendants' statement, and declaring that "If our stone is not good enough for you to start, it is not good enough for you to finish." Such a combination would be clearly illegal (*Industrial Ass'n of San Francisco* v. *U. S.*, 268 U. S. 64).

CONCLUSION.

We submit that the evidence shows an ordinary disagreement between the labor union and certain employers in Bedford in 1921, followed by efforts on the part of the defeated union to destroy interstate trade and commerce in the products of the reorganized production forces, and that, in these essentials, the case is identical with *Loewe* v. *Lawlor, Duplex Printing Press Co.* v. *Deering*, and *U. S.* v. *Brims*.

Respectfully submitted,

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Counsel for Complainants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1927.

No. 412

BEDFORD CUT STONE COMPANY, ET AL.,
Appellants,

vs.

JOURNEYMEN STONE CUTTERS' ASSOCIATION OF NORTH AMERICA, ET AL.,
Appellees.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPELLEES' BRIEF.

MOSES B. LAIRY,
EDWARD E. GATES,
FREDERICK VAN NUYS,
Attorneys for Respondents.

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APPELLEES' BRIEF.

BRIEF RE-STATEMENT OF CASE.

The respondents desire to restate the case as follows: This is an action instituted by appellants for injunction and damages against the Journeymen Stone Cutters'

Association of North America, the officers of such Association and certain affiliated local unions and their officers.

The appellants are cut-stone contractors and quarriers. They are all members of the International Association of Quarriers and Contractors. Beginning with the year 1913, an international working agreement existed between such International Association and the said Journeymen Stone Cutters Association, by the terms of which agreement members of the defendant unions were employed by appellants. This international agreement terminated May 1, 1921, since which time there has been no working agreement between said two organizations.

On May 1, 1921, appellants closed their shops and quarries to members of the defendant unions and a little later organized their workmen into what were termed "independent union." Employment was made conditional upon membership in such "independent unions." Although barred from working for appellants, members of the defendant unions continued to work upon all classes of stone produced by appellants until August 1, 1924. At that time, pursuant to action taken in the International Tri-Annual Convention of said Stone Cutters' Association, held at Cleveland, Ohio, in October, 1923, an order of the executive board of said Association became effective, which order requested all members of said general union to refrain from working on any material which had been planed, turned, cut or semi-finished by men working in opposition to said Association. Some of the stone produced by appellants came within the class designated in

this order and members of said Association have since said date refrained from working upon the stone which has been planed, turned, cut or semi-finished in appellants' shops and quarries.

On October 2, 1924, appellants instituted this action for injunction and damages.

SUMMARY OF PLEADINGS.

To "Appellants' Summary of Pleadings," respondents desire to make the following corrections and additions:

Par. 5—Ans. Respondents say that they have never denominated complainants nor their employes as unfair or circulated lists to that effect; have never refused to work upon and have at all times and are now working upon products produced by complainants by laborers who are not eligible to membership in defendant unions.

Par. 14—Ans. Admit that the competition exists and that the principal producers of artificial stone are unionized and are located outside of the State of Indiana, but deny the existence of any conspiracy or purpose to prevent the sale or use in interstate commerce of complainants' products.

Par. 16—Ans. The practice of sympathetic strikes is denied and respondents say that in no instances has a sympathetic strike been called or threatened by reason of respondents' refusal to work on complainants' products or by reason of the employment of non-union labor on any building where complainants' products are being installed; allege that not more than twenty per cent of the

stone contractors outside of Indiana operate on a closed-shop basis and deny that contractors cannot do business without the consent of respondents and further say that fifty per cent of complainants' shipments is not affected by the order in question.

Par. 17—Ans. Deny that they have engaged in a conspiracy to prevent any person in any state to pursue the trade of stone-cutter, planerman, latheman, etc., and have neither said nor done anything to prevent such pursuit by any person and deny that they have been engaged in a combination to prevent complainants from selling their products in interstate commerce.

Par. 18—Ans. A. Respondents say that a provision to the effect that "no member of this Association shall cut, carve or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended," was written into the constitution of the G. U. by the convention of representatives of the membership of all local unions many years previous to May 1, 1921, and was in full force and effect many years prior to May 1, 1921, and deny that they have made it generally known to the public that the employees of complainants are working in opposition to the union but admit that they have made such fact known to the members of the G. U. and its local unions.

B. Deny that they have written notices to customers or prospective customers of complainants that no union members will work on complainants' product and further say that the letter set out in Sub-division B of Par. 18 of

the Bill of Complaint, alleged to have been written by one John Sucklin, secretary-treasurer of Toledo local, was wholly unauthorized and that respondents had no knowledge of such letter until after the institution of this suit.

C. Deny that they have declared orally or in writing that complainants and their products are unfair but allege that they have only declared that stone unfair which is produced by complainants by labor eligible to membership in the unions, and deny the publication of circulars or lists of stone-producers or contractors which expressly or by implication classify the complainants or their products as unfair and deny that they have threatened any architect, owner, building-contractor or cut-stone contractor that they will suffer labor troubles, through strikes of stone-cutters, if they attempt to purchase or use the unfair stone in question.

D. Deny that they have instigated, incited or joined in strikes of stone-cutters or other craftsmen upon buildings in states other than Indiana because materials produced by complainants were being used therein, but admit that they have refused to work upon the class of stone herein repeatedly described.

E. Deny in toto and admit that members of union had been ordered to quit work upon the stone described.

F. Deny and say that contractors and builders have, during all the time complained of, employed men not members of the union to install complainants' products and deny that they have interfered with the work of such non-union men.

G. Deny and say that they have not picketed the quarries and shops of complainants and have in no wise attempted to induce employees, contractors and carvers to breach contracts.

APPELLANTS' SUMMARY OF IMPORTANT ADMISSIONS.

Respondents desire to correct what they believe to be an incomplete statement of "Important Admissions."

The provision in the Constitution of the General Union, viz: "No member of this Association shall cut, carve or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended," was written into the said Constitution in 1912 and was not written into such Constitution in contemplation of the termination of the working agreement between complainants and respondents. The provision was adopted by representatives of the entire membership of all general and local unions in convention assembled. With the knowledge and consent of the respondents, all members of the union worked on all the complainants' products for three years after their working agreement terminated, and the order of July 7, 1924, to become effective August 1, 1924, resulted from a posting of notices in complainants' shops, which notices were as follows:

"NOTICE

On and after Monday, June 20, 1921, all stone-cutters and carvers employed in this mill must be members in good standing of the Stone-cutters' and Carvers' Union of the Indiana Limestone District in Lawrence and Monroe counties.

On and after Monday, June 20, 1921, all men operating planers, headers, shapers, lathes and milling machines in this mill must be members in good standing of the Planermen's Union of the Indiana Limestone District in Lawrence and Monroe counties."

Respondents further say that the posting of above notices and the enforcement of same was in fact "a lock-out" by complainants.

APPELLANTS' INSTANCES OF INTERFERENCE.

The instances of interference allege to have been caused by the enforcement of the Union order forbidding its members from handling certain of complainants' products are all based upon the affidavits submitted by appellants to the trial court. Many of these alleged interferences are fully explained or contradicted by the affidavits filed by respondents.

For the Court's convenience, we supplement appellants' references to the record by references to respondents' counter-affidavits:

Chicago—

Appellants' References—(pp. 70-81, 145-147, 156-157, 112.)

Respondents' References—(pp. 190-191.)

Lansing—

Appellants' References—(pp. 150-154.)

Respondents' References—(pp. 179-180-181.)

Kokomo—

Appellants' References—(pp. 81-83, 148-149.)

Respondents' References—(pp. 184-185.)

Upland-Peru—

Appellants' References—(p. 149.)

Respondents' References—(pp. 184-185.)

Indianapolis—

Appellants' References—(p. 112.)

Respondents' References—(p. 182.)

POINT I.

GENERAL OBSERVATIONS AS TO THE PURPOSE AND EFFECT OF THE SHERMAN ANTI-TRUST LAW AND OF ITS APPLICATION TO THE FACTS IN THIS CASE.

Appellants in their bill attempt to state a case arising out of the violation by appellees of the Sherman Anti-Trust Act and, by their evidence, they attempt to prove facts to show a violation of said act by appellees.

It is the position of appellees that the facts before the Court are not sufficient to show a violation of said act by appellees or to render them or any of them amenable to the provisions of said act.

The Sherman Act is aimed at trusts, monopolies, combinations and conspiracies having for their direct object the purpose to monopolize, in whole or in part, the trade

or commerce between states or with foreign nations, the primary purpose being to create a monopoly in handling or selling certain products, to stifle competition, and to enhance the price of the commodity to the injury of the public and to the financial advantage and gain of those connected with the unlawful combination or conspiracy. The purpose of the act was to protect the general public against the oppression and greed of such unlawful combinations and conspiracies.

The appellants were each engaged in quarrying and shipping building stone in interstate commerce. The stone so handled in interstate commerce and shipped was sawed and partly dressed; but, before it could be used in the building, it required further dressing and fitting.

The appellees are Journeymens Stone Cutters Association of North America, and the officers and certain members of that association. The purpose of that organization was to secure and maintain fair wages for its members, to improve working conditions and to maintain order and discipline among its members. Said organization is not engaged in trade or commerce in any commodity which is the subject of interstate trade, and the evidence fails to show that said organization or any of its members are in league with, or have any agreement, understanding or connection with any other person, corporation or association which is engaged in any business in competition with that of appellants. It can not be inferred from the evidence that the refusal of the members to work on the stone produced and shipped by appellant was prompted by a motive or purpose to cut down

the amount of Bedford stone moving in interstate commerce and thus reduce the supply so as to lessen or stifle the competition with other building stone and substitutes and thereby increase the price of such other building stones and substitutes therefor to the detriment of the public.

The facts to which the attention of the Court has just been called distinguishes the instant case from *United States vs. Brims*, 71 L. Ed. 194, on which appellants strongly rely in support of their contention in the case at bar.

In that case the respondents were, first manufacturers of mill work in the City of Chicago. The product manufactured by these respondents consisted of window and door fittings, such as baseboard, molding, cornice, etc.; second, building contractors who purchase and cause such mill work to be installed; and, third, representatives of the carpenters union whose members are employed by both the manufacturers and the contractors.

It appears that, prior to the agreement and understanding by and between the three classes of respondents mentioned, the manufacturers of mill work in Chicago had produced and sold their product in competition with manufacturers of a like product whose factories were located outside of Illinois—principally in Wisconsin and the South. These outside manufacturers shipped their product to Chicago and sold it on the market there at a price less than the Chicago manufacturers who employed union labor could afford to sell it. The primary purpose of respondents in that case was to eliminate the competition from other states and the manufacturers seem to

have been the prime movers in perfecting the agreement and understanding with the other respondents which was intended to produce and which did produce that result.

The Court says:

> "They wished to eliminate the competition of Wisconsin and other non-union mills which were paying lower wages and consequently could undersell them. Obviously, it would tend to bring about the desired result if a general combination could be secured under which the manufacturers and contractors would employ only union carpenters with the understanding that the latter would refuse to install non-union made millwork. And we think there is evidence reasonably tending to show that such a combination was brought about, and that, as intended by all the parties, the so-called outside competition was cut down and thereby interstate commerce directly and materially impeded. The local manufacturers, relieved from the competition that came through interstate commerce, increased their output and profits; they gave special discounts to local contractors; more union carpenters secured employment in Chicago and their wages were increased. These were the incentives which brought about the combination. The non-union mills outside of the city found their Chicago market greatly circumscribed or destroyed; the price of buildings was increased; and, as usual under such circumstances, the public paid excessive prices."

The appellees in the present case have a provision in the constitution which was adopted long before any controversy arose with appellants or any of them, which reads as follows:

> "No member of this Association shall cut, carve or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended."

The Association and its members lived up to that provision by refusing to cut, carve or fit any such material either in Indiana or in other states. They did this and they did nothing more. They instituted no boycott against said material; they did not dissuage anyone from purchasing it or coerce anyone to prevent such a purchase. They made no attempt to prevent other persons from cutting and fitting said material.

The purpose of respondents was not directed against interstate commerce. Their sole and only purpose, as disclosed by the evidence was to unionize the cutters and carvers of stone at the quarries. As said by this Court in a recent case:

> "The record is entirely without evidence or circumstances to show that the defendants in their conspiracy to deprive the complainants of their workers were thus directing their scheme against interstate commerce. It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainants to yield to demands in respect to the terms of employment; but they did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product."
>
> *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 459, at p. 471.

The provision of the constitution quoted was well calculated and adapted to carry out the purposes and to promote the ends which the association was organized to accomplish. One of such purposes was to supply employment at remunerative wages for members of the union and to that end it was thought desirable to unionize all places where stone-cutters and fitters were employed. In what appellees did, they had no intent or purpose to stifle competition or to increase prices, and they had no interest to be served in so doing. They were endeavorinl only to carry out the purposes of their organization in a legal manner; and, if their conduct in so doing had any effect in reducing the supply moving in interstate commerce, such effect was an incidental, indirect and remote obstruction to such commerce.

In the case of *Anderson v. United States*, 171 U. S. 604, this Court speaking on the subject said at page 616 of the opinion:

> "As is said in *Smith v. Alabama*, 124 U. S. 465, 473:
>
> > 'There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations.'
>
> *The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and bona fide purpose of properly and reasonably regulating the conduct of their business among themselves and*

with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commrece for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void."

The decision of this case depends on whether the facts shown by the evidence show an intention and purpose to directly and immediately restrain interstate commerce or whether the primary intent and purpose was to carry into effect the purposes and objects of the labor association in such a way as to legitimately secure the ends for which that organization was formed.

> "The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate. *(Hopkins v. U. S.*, 171 U. S. 578-592). There are many cases however where the acknowledged powers of a state may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations. *(Smith v. Ala.*, 124 U. S. 465-473). The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and bona fide purpose of properly and reasonably regulating the conduct of their business among themselves and the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though

only indirectly and unintentionally affect interstate trade or commerce, in that event, we think the agreement would be good. *(Hopkins v. United States,* 171 U. S. 590.)"

It is the position of appellees that the facts of this case clearly show that the conduct of appellees does not fall within the inhibition of the statute under consideration.

CASES DISTINGUISHED.

The undisputed facts in the instant case make it clearly distinguishable from the authorities cited in appellants' brief in support of the proposition that "Appellees' Combination Violates the Sherman Anti-Trust Act."

Duplex Printing Press Co. v. Deering, 254 U. S. 443, was so cited. The Court found the acts complained of to be as follows:

> "The acts embraced the following, with others: warning customers that it would be better for them not to purchase, or having purchased, not to install, presses made by complainant, and threatening them with loss should they do so; threatening customers with sympathetic strikes in other trades; notifying a trucking company usually employed by customers to haul the presses not to do so, and threatening it with trouble if it should; inciting employees of the trucking company, and other men employed by customers of complainant, to strike against their respective employers in order to interfere with the hauling and installation of presses, and thus bring pressure to bear upon the customers; notifying repair shops not to do repair work on Duplex presses; coercing union men by threatening them with loss of union cards and with being listed as "scabs" if they assisted

> in installing the presses; threatening an exposition company with a strike if it permitted complainants' presses to be exhibited; and resorting to a variety of other modes of preventing the sale of presses of complainant's manufacture in or about New York City, and delivery of them in interstate commerce, such as injuring and threatening to injure complainant's customers and prospective customers, and persons concerned in hauling, handling, or installing the presses."

The Court applied the law declared in *Loewe v. Lawlor*, 208 U. S. 274, and found that the prayer for an injunction should be granted.

In *Loewe v. Lawlor*, the case went to the Supreme Court upon a certificate of question, viz., could plaintiffs maintain an action upon facts stated in the complaint under the Anti-Trust Act?

The means to be used by the defendant unions in their efforts to unionize plaintiff's factory included the following:

> "A boycott against all hats made for sale and sold and delivered, * * * by the plaintiffs to said wholesale dealers in states other than Connecticut, and to actively boycott the same and the business of those who should deal in same and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several states,"

to procure a similar boycott from affiliated labor unions belonging to the American Federation of Labor; to distribute circulars containing notices that the dealers in plaintiff's hats and their customers would be boycotted;

to threaten with boycott all customers who should buy any goods whatever, whether union made or not, from dealers who handled plaintiff's goods; to employ a large number of agents to call upon wholesale dealers and their customers and threaten them with loss of business if they should handle plaintiff's hats; to use the daily press and other periodicals to announce and advertise said boycotts.

The fact in the above cases and the undisputed facts in the instant case are so entirely different that the law declared by the Supreme Court in the above cases has no application to the case now before the Court. In above two cases, the purpose of the defendants to accomplish their object through obstruction to interstate commerce was palpable. The object and intention of the combination determined its illegality.

In the case of *Irving v. Neal*, 209 Fed. 471, cited by appellants, the bill alleged that defendants had put complainants on "unfair" lists and distributed such lists to builders, architects and owners and omitted Complainant's name from "fair" lists which were so sent to builders, etc., and accompanied by letters saying that the employment of such "fair" shops would avoid labor troubles. Said bill also alleged the calling of sympathetic strikes and that letters were sent to builders, architects and owners asking them not to contract with complainants because they were "unfair" concerns.

The Court granted an injunction under the authority of *Loewe v. Lawlor*, and similar decisions.

ATTACK ON COMMERCE OR PRODUCTION?

Appellants seek to distinguish the instant case from the law as declared in *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, and *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 459, by denominating appellees' action as an attack on commerce and not on production.

The appellees insist that the attempted distinction is not justified by the undisputed facts in the present case nor does the same take the present case from under the rules laid down in such cases.

In *United Leather Workers v. Herkert & Meisel Trunk Co.*, the Court said:

> "It is only when the intent or the necessary effect upon such commerce in the article is to enable those who intentionally diminish its product, to monopolize its supply or control its price or discriminate as between its would-be purchasers, that such unlawful dimunition of its manufacture can be said directly to burden interstate commerce."

In the instant case there is no showing of the intent upon the part of the appellees to monopolize, control or discriminate as defined above, nor is there any showing of such results. In the absence of such showing, it is insisted by the appellees that it matters not whether that alleged attack be upon a product or upon a place.

Quoting further from the same case, the Court said:

> "The record is entirely without evidence or circumstances to show that the defendants in their

conspiracy to deprive the complainants of their workers were thus directing their scheme against interstate commerce. It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainants to yield to demands in respect to the terms of employment; but they did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product.

We concur with the dissenting Judge in the Circuit Court of Appeals, when, in speaking of the conclusion of the majority, he said: 'The natural, logical and inevitable result will be that every strike in any industry or even in a single factory will be within the Sherman Act and subject to Federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.' (284 Fed. 446, 464.)

We can not think that Congress intended any such result in the enactment of the Anti-Trust Act or that the decisions of this Court warrant such construction."

Distinguishing practically all of the cases cited in appellant's brief, in above case, the Court further said:

> "None of these cases, although they all illustrate the practical conception of interstate commerce as a flowing stream from one state to another formed by a regular course of business, can properly be said to support the argument that mere intentional cutting down of manufacture or production is a direct restraint of commerce in the product intended to be shipped when ready."

In *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, the Court said:

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. * * * * Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce. * * * * Again, it (Congress) has the power to punish conspiracies in which such practices are part of the plan to hinder, restrain or monopolize interstate commerce. But in the latter case, the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances." (Pp. 407-408.)

The facts in the instant case are peculiar in that they show an entire absence of those acts which usually accompany a strike or boycott. Cessation of work upon that class of stone which is produced by employers who are eligible to membership in the defendant unions is admitted. No other overt acts have been committed by appellees.

The intent to interfere with the interstate business of complainants is denied. The modicum of injury attempted to be proved by appellants is also denied. There is no intent proven to interfere with interstate commerce and the necessary effect of such cessation of work does not bring the action of appellees within the prohibited combinations declared in a long line of cases referred to in appellant's brief.

POINT II.

DISCRIMINATION BY COMPLAINANTS.

Upon this subject the record shows that from 1913 to 1921 the appellants and appellees worked together under an harmonious agreement (p. 159); that machine-men were always recognized by appellants as eligible to membership in the union; that since May 1, 1921, appellants have refused to so recognize machine-men as eligible to membership in the union (pp. 161-162-163); that at the annual convention of Cut Stone Contractors and Quarrymen held in Chicago in January, 1921, said Association refused to recognize planermen as members of the union (pp. 162-163); that said Association would make a working agreement with appellees which included only stone cutters and carvers (p. 162-163); that appellees agreed to continue working relations after May 1, 1921, but appellants refused (p. 163); that bulletins were posted in the shops and quarries of appellants which locked out appellees (pp. 163-164); that appellants organized what were known as "independent unions" (p. 165); that appellants organized the "Bedford Stone Club" (p. 165); that said "Club" managed the said "independent unions" and endeavored to enlist all contractors and quarriers in its effort to "lock out" union labor (pp. 165-172, inclusive); that after above action repeated overtures were made by appellees to negotiate an harmonious working agreement (pp. 162-163); that appellants refused to treat with appellees (pp. 163-164-165).

Appellees respectfully submit that the record shows that while the appellants refused to permit members of

the union to work in their shops and quarries, they invoke the courts for an order which they believe will force such members to work on appellants' product after it is produced by their so-called "independent unions." In other words, the appellants do not come into court with clean hands.

In *Iron Molders' Union v. Allis Chalmers Co.*, 166 Fed. at page 52, Grosscup, Circuit Judge, defines a lock-out as follows:

> "A strike is cessation of work by employees in an effort to get for the employees more desirable terms. A lock-out is a cessation of the furnishing of work to employees in an effort to get for the employer more desirable terms."

We insist that this "cessation of the furnishing of work to employees" may be accomplished by closing the factory or promulgating and enforcing conditions of employment which are palpably adopted for the purpose of and do eliminate a class of workmen.

The facts in *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229, cited by appellants, are so entirely different from the facts in the instant case that the discrimination defined in such case as lawful has no application here. There the unions endeavored to induce employees of complainant to leave its employ by unlawful and malicious methods.

In the present case there is no evidence of the use of either unlawful or malicious methods upon the part of appellees to cause either the employers or employees to

breach their present contractual relations. Appellees by their conduct have completely acquiesced in appellants freedom to hire whomsoever they please. They have not disturbed nor attempted to disturb working relations which appear to be satisfactory to appellants. Having been barred from working in appellants' places of business, they are simply asking the same privilege as to appellants' product.

The exclusion of a plaintiff from the peculiar favors of courts of equity results where his conduct has been unconsionable by reason of a bad motive or where the result in any degree induced by his conduct will be unconsionable either in the benefit to himself or the injury to others.

Larschfield v. Kittell, 142 Wis. 172.

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be sustained.

Moses B. Lairy,
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Frederick Van Nuys,
Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 412.—October Term, 1926.

Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago and Bloomington Stone Company, et al., Petitioners,
vs.
Journeymen Stone Cutters' Association of North America, Michael W. Mitchell, individually, etc., et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 11, 1927.]

Mr. Justice Sutherland delivered the opinion of the Court.

Petitioners, Bedford Cut Stone Company and 23 others, all, with one or two exceptions, Indiana corporations, are in the business of quarrying or fabricating, or both quarrying and fabricating, Indiana limestone in what is called the Bedford-Bloomington District in the State of Indiana. Their combined investment is about $6,000,000, and their annual aggregate sales amount to about $15,000,000, more than 75% of which are made in interstate commerce to customers outside the State of Indiana. The Journeymen Stone Cutters' Association of North America, sometimes called and hereinafter referred to as the "General Union," is an association of mechanics engaged in the stone-cutting trade. It has a constitution, by-laws and officers, and an income derived from assessments upon its members. Its principal headquarters are in Indiana, and it has a membership of about 5,000 persons, divided into over 150 local unions located in various states and in Canada, each of such local unions having its own by-laws, officers, and income derived from like assessments. By virtue of his membership, each member of these local unions is a member of the General Union. The members of the General Union and allied locals throughout the United States are stone cutters, carvers, curb cutters, curb setters, bridge cutters, planermen, lathemen, and carborundum

moulding machine operators, engaged in the cutting, patching and fabrication of all natural and artificial stones; and the General Union claims jurisdiction over all of them.

This suit was brought by petitioners against the General Union and some of its officers, and a number of affiliated local unions and some of their officers, to enjoin them from combining and conspiring together to commit, and from committing, various acts in restraint of interstate commerce in violation of the federal Anti-Trust Act, c. 647, 26 Stat. 209, and to petitioners' great and irreparable damage. The federal district court for the district of Indiana, after a hearing, refused a preliminary injunction and, subsequently, on final hearing, entered a decree dismissing the bill for want of equity. On appeal, this decree was affirmed by the court of appeals upon the authority of an earlier opinion in the same case. 9 F. (2d) 40.

The facts, so far as necessary to be stated, follow. Limestone produced by petitioners is quarried and fabricated largely for building construction purposes. The stone is first taken in rough blocks from the earth and, generally, then cut into appropriate sizes and sometimes planed. Part of this product is shipped directly to buildings, where it is fitted, trimmed and set in place, the remainder being sold in the rough to contractors to be fabricated. The stone sold in interstate commerce comes into competition with other kinds of natural and artificial stone. The principal producers of artificial stone are unionized and are located outside of Indiana. Before 1921, petitioners carried on their work in Indiana under written agreement with the General Union, but since that time they have operated under agreements with unaffiliated unions, with the effect of closing their shops and quarries against the members of the General Union and its locals. Prior to the filing of the bill of complaint, the General Union issued a notice to all its locals and members, directing its members not to work on stone "that has been started—planed, turned, cut, or semi-finished—by men working in opposition to our organization," and setting forth that a convention of the union had determined that "members were to rigidly enforce the rule to keep off all work started by men working in opposition to our organization, with the exception of the work of Shea-Donnelly, which firm holds an injunction against our association." Stone produced by peti-

tioners by labor eligible to membership in respondents' unions was declared "unfair"; and the President of the General Union announced that the rule against handling such stone was to be promptly enforced in every part of the country. Most of the stone workers employed, outside the State of Indiana, on the buildings where petitioners' product is used, are members of the General Union; and in most of the industrial centers, building construction is on a closed shop union basis.

The rule requiring members to refrain from working on "unfair" stone was persistently adhered to and effectively enforced against petitioners' product, in a large number of cities and in many states. The evidence shows many instances of interference with the use of petitioners' stone by interstate customers, and expressions of apprehension on the part of such customers of labor troubles if they purchased the stone. The President of the General Union himself testified, in effect, that generally the men were living up to the order and if it were shown to him that they did not do so in any place he would see that they did. Members found working on petitioners' product, were ordered to stop and threatened with a revocation of their cards if they continued; and the order of the General Union seems to have been enforced even when it might be against the desire of the local union. The transcript contains the record of a hearing upon these matters before the Colorado Industrial Commission, from which it appears that in obedience to the order of the General Union its members theretofore employed in Denver upon local building stopped work because petitioners' product was being used. The local contractor was notified merely that the men stopped work because the stone being used was "unfair." The contractor personally had no trouble of any kind with the union, and no other reason for the strike than that stated above existed. B. F. James, a member and an acting officer of the General Union testified that the local union in conducting its strike against a local builder had no choice in the matter; that they had their orders from the General Union with which they complied; that there was no difference or feeling whatever between the union and the local employer; that the fight was with the Bedford stone producers and they were trying to affect them through the local employer.

"Q. And you people have no choice in the matter, you are just complying with the orders from the International [General Union]?
"A. We have no choice whatever.

"Q. Probably, if it was left up to you people here, knowing this employer as you do, why, your organization here, local organization, would not strike on this man?

"A. I don't believe we would, no.

"Q. But you have got to follow the orders of your International organization?

"A. Yes, sir."

The evidence makes plain that neither the General Union nor the locals had any grievance against any of the builders—local purchasers of the stone—or any other local grievance; and that the strikes were ordered and conducted for the sole purpose of preventing the use and, consequently, the sale and shipment in interstate commerce, of petitioners' product, in order, by threatening the loss or serious curtailment of their interstate market, to force petitioners to the alternative of coming to undesired terms with the members of these unions. In 1924, the President of the General Union said:

"The natural stone industry needs all the natural advantages it can possibly get, as there are so many kinds of substitutes to take the natural stone's place in the building material market, that it behooves the natural stone employers to do their utmost to see that no handicap is in its way, and it is a well known fact that when any material is known to have labor grievances, it retards that material in the building market, as the building public do not want the stigma on their building that it was built by 'unfair labor', and they are also afraid of stoppage of work and unnecessary disputes while their building is in course of construction, and no one can blame them for that."

In the Colorado inquiry, the witness James further testified that the strike order did not make any allowance for stone theretofore ordered. "We were trying to affect the Bedford people through the local man."

"Q. So the only person injured would be your own local man, who is your employer, and your personal friend, is that it?

"A. In a way. If it was finished that way, he would be the only one hurt. We are not fighting on this Denver man. We are trying to force these people through the other subcontractors all over the country.

. . .

"Q. You are trying to force the Bedford to employ members of your union to do this work?

"A. Yes, sir.

"Q. And irrespective of who it hurts, that is the object?
"A. That is the object. It is done from our headquarters.
"Q. Mr. Fernald, or anybody else, they have got to get out of the road, that is the object?
"A. We are trying to gain this point, irrespective of who it hurts."

From a consideration of all the evidence, it is apparent that the enforcement of the general order to strike against petitioners' product could have had no purpose other than that of coercing or inducing the local employers to refrain from purchasing such product. To accept the assertion made here to the contrary, would be to say that the order and the effort to enforce it were vain and idle things without any rational purpose whatsoever. And indeed, on the argument, in answer to a question from the bench, counsel for respondents very frankly said that, unless petitioners' interstate trade in the so-called unfair stone were injuriously affected, the strikes would accomplish nothing.

That the means adopted to bring about the contemplated restraint of commerce operated after physical transportation had ended is immaterial. *Loewe* v. *Lawlor*, 208 U. S. 274, 301; *Boyle* v. *United States*, 259 Fed. 803, 805-806. The product against which the strikes were directed, it is true, had come to rest in the respective localities to which it had been shipped, so that it had ceased to be a subject of interstate commerce, *Industrial Ass'n* v. *United States*, 268 U. S. 64, 78-79; and interferences for a purely local object with its use, with no intention, express or implied, to restrain interstate commerce, it may be assumed, would not have been a violation of the Anti-Trust Act. *Id.*, p. 77; *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, 410-411. But these interferences were not thus in pursuit of a local motive,—they had for their primary aim restraint of the interstate sale and shipment of the commodity. Interstate commerce was the direct object of attack "for the sake of which the several specific acts and courses of conduct [were] done and adopted." And the restraint of such commerce was the necessary consequence of the acts and conduct and the immediate end in view. *Swift and Company* v. *United States*, 196 U. S. 375, 397. Prevention of the use of petitioners' product, which, without more, might have been a purely local matter, therefore, was only a part of the conspiracy, which must

be construed as an entirety; and, when so regarded, the local transactions become a part of the general plan and purpose to destroy or narrow petitioners' interstate trade. *Montague & Co.* v. *Lowry*, 193 U. S. 38, 45-46. In other words, strikes against the local use of the product were simply the means adopted to effect the unlawful restraint. And it is this result, not the means devised to secure it, which gives character to the conspiracy.

Respondents' chief contention is that "their sole and only purpose . . . was to unionize the cutters and carvers of stone at the quarries." And it may be conceded that this was the ultimate end in view. But how was that end to be effected? The evidence shows indubitably that it was by an attack upon the use of the product in other states to which it had been and was being shipped, with the intent and purpose of bringing about the loss or serious reduction of petitioners' interstate business, and thereby forcing compliance with the demands of the unions. And, since these strikes were directed against the use of petitioners' product in other states, with the plain design of suppressing or narrowing the interstate market, it is no answer to say that the ultimate object to be accomplished was to bring about a change of conduct on the part of petitioners in respect of the employment of union members in Indiana. A restraint of interstate commerce cannot be justified by the fact that the ultimate object of the participants was to secure an ulterior benefit which they might have been at liberty to pursue by means not involving such restraint. *Anderson* v. *Shipowners Association*, November 22, 1926; *Duplex Co.* v. *Deering*, 254 U. S. 443, 468; *Ellis* v. *Inman, Poulsen & Co.*, 131 Fed. 182, 186.

The case, therefore, is controlled, not by *United Mine Workers* v. *Coronado Co.*, *supra* and *United Leather Workers* v. *Herkert*, 265 U. S. 457, as respondents contend, but by others presently to be discussed. In the *United Leather Workers* case, it appeared that the strikes were levelled only against production, and that the strikers (p. 471) "did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product;" and the decision rests upon the ground that there was an entire absence of evidence or circumstances to show that the defendants, in their conspiracy to coerce complain-

ants, were directing their scheme against interstate commerce. *United Mine Workers* v. *Coronado Co., supra,* pp. 408-409, is to the same effect.

But in the second *United Mine Workers* case, 268 U. S. 295, 310, this court found sufficient evidence, even where the strike was directed against production, of an intent to restrain interstate commerce, and said:

"The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act."

In the present case, since the strikes were directed against the use of the product in other states, with the immediate purpose and necessary effect of restraining future sales and shipments in interstate commerce, the determinative decisions to be applied are those pointed out in the *United Leather Workers* case, at p. 469:

"In Loewe *v.* Lawlor, 208 U. S. 274, and in Duplex Co. *v.* Deering, 254 U. S. 443, members of labor unions having a controversy with their employers sought to embarrass the sales by their employers of the product of their manufacture in other States by boycott and otherwise. They were held guilty of a conspiracy against interstate commerce because of their palpable intent to achieve their purpose by direct obstruction of that commerce."

Respondents cite and rely upon *Hopkins* v. *United States*, 171 U. S. 578, and *Anderson* v. *United States*, 171 U. S. 604. But of those cases we need say no more than that they involved agreements which neither in purpose nor in necessary result related to or had any direct effect upon interstate commerce.

With a few changes in respect of the product involved, dates, names and incidents, which would have no effect upon the principles established, the opinion in *Duplex Co.* v. *Deering, supra,* might serve as an opinion in this case. The object of the boycott there was precisely the same as it is here, and the interferences with interstate commerce, while they were more numerous and more drastic, did not differ in essential character from the interferences here. A short statement of the case will make this clear.

The complainant was a manufacturer of printing presses and conducted its business on the "open shop" policy. There had been an unsuccessful strike to enforce the "closed shop," the eight-hour day and the union scale of wages. The strikers and the local organizations to which they belonged were affiliated with an international association having a membership of more than sixty thousand. They entered into a combination to restrain complainant's interstate trade by means of a "secondary boycott," in pursuance of which complainant's customers in another state were warned not to purchase, install or operate its printing presses and threatened with loss and sympathetic strikes should they do so. The strikers threatened a trucking company with trouble if it should haul the presses; incited employees of the trucking company and other men employed by complainant's customers to strike in order to interfere with the hauling and installation of presses; notified repair shops not to do repair work on the presses; threatened union men with loss of union cards and the blacklist if they assisted in installing the presses; and resorted to other methods of preventing the sale and delivery of complainant's presses in interstate commerce.

This court held that complainant's business of manufacturing presses and disposing of them in commerce was a property right entitled to protection against unlawful injury or interference; that unrestrained access to the channels of interstate commerce was necessary for the successful conduct of that business; and that the combination to hinder and obstruct such commerce by the means indicated was in violation of the Sherman Anti-Trust Act, as amended by the Clayton Act. The combination was held to constitute a "secondary boycott," defined as "a combination not merely to refrain from dealing with complainant, or to advise or by peaceful means persuade complainant's customers to refrain ('primary boycott'), but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage from complainant through fear of loss or damage to themselves should they deal with it." Whether either kind of boycott was lawful or unlawful at common law was held to be immaterial, and the distinction between a primary and a secondary boycott was only important to be considered upon the question of the proper construction of the Clayton Act; and, as

to that, it was distinctly determined that the Clayton Act was not intended to legalize the secondary boycott.

The court further held (p. 467-468) that by prior decisions of this court, it had been settled that a restraint of interstate commerce produced by peaceable persuasion was as much within the prohibition of the Anti-Trust Act as one accomplished by force or threats of force, and that there was nothing in § 20 of the Clayton Act (p. 473 *et seq.*) which modified that rule as applied to the case under review or justified a resort to the secondary boycott. And it was said (p. 477) that the harmful consequences of the opposite construction, adopted by the court below, were illustrated by that case where an ordinary controversy in a manufacturing establishment, concerning terms and conditions of employment there, had been held a sufficient occasion for imposing a general embargo upon the products of the establishment and a nation-wide blockade of the channels of interstate commerce against them. The conclusion was reached that complainant was entitled to an injunction under the Sherman Act as amended by the Clayton Act, and that it was unnecessary to consider whether a like result would follow under the common law or local statutes. Finally, it is important to note (p. 478) the scope of the injunction which was authorized. Not only were the association and its members to be restrained from interfering with the sale, transportation, or delivery in interstate commerce of the presses, but also from interfering with the "carting, installation, use, operation, exhibition, display, or repairing of any such press or presses, . . . and especially from using any force, threats, command, direction, or even persuasion with the object or having the effect of causing any person or persons to decline employment, cease employment, or not seek employment, or to refrain from work or cease working under any person, firm, or corporation being a purchaser or prospective purchaser of any printing press or presses from complainant, . . ."

Loewe v. *Lawlor, supra*, also dealt with a secondary boycott. The case arose before the enactment of the Clayton Act, but, in view of what has just been said, that is not important. The defendants, certain labor organizations and the members thereof, undertook to compel complainants to unionize their factory. Being unsuc-

cessful, the members of the labor organizations withdrew from complainants' service and endeavored to persuade others to do the same. Defendants then declared a boycott against hats manufactured by complainants found in the hands of their customers in other states, with the purpose and intent to destroy or curtail complainants' market in other states and thereby coerce compliance with defendants' demands. This was held (pp. 292-294) to be a combination falling "within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes," and an unlawful restraint of interstate commerce as defined by the Anti-Trust Act. Referring to earlier cases, it was said (p. 297) that the Anti-Trust Act had a broader application than the prohibition of restraints of trade unlawful at common law, and that its effect was to declare illegal "every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be the parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States."

In *United States* v. *Brims et al.* (November 23, 1926), a criminal case, this court dealt with a combination of manufacturers, contractors and carpenters in Chicago, having for its object the destruction of the competition of nonunion mills in Wisconsin and elsewhere by the employment in Chicago of union carpenters only, with the understanding that they would refuse to install nonunion-made millwork. There was evidence tending to show that so-called outside competition was cut down and thereby interstate commerce directly and materially impeded, and that this result was within the intention of the combination, which, upon these facts, was held to be in violation of the Anti-Trust Act.

In *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 438-439, this court said that the restraining powers of the courts extend to every device whereby commerce is illegally restrained; and that—"To hold that the restraint of trade under the Sherman anti-trust act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined would be to render the law impotent."

In cases arising outside the Anti-Trust Act, involving strikes like those here under review against so-called unfair products, there

is a sharp conflict of opinion. On the one hand, it is said that such a strike is justified on the ground of self-interest; that the injury to the producer is inflicted, not maliciously, but in self-defense; that the refusal of the producer to deal with the union and to observe its standards threatens the interest of all its members and the members of the affiliated locals; and that a strike against the unfair material is a mere recognition of this unity of interest, and in refusing to work on such material the union is only refusing to aid in its own destruction. The opposite view is illustrated by such cases as *Toledo, etc., Ry. Co.* v. *Pennsylvania Co.*, 54 Fed. 730; *Thomas* v. *Cincinnati, etc., Ry. Co.*, 62 Fed. 803, 817, *et seq.*; *Moores* v. *Bricklayers' Union*, 23 Wkly. Cin. Law Bull. 48 (affirmed by the Supreme Court of Ohio without opinion); *Burnham* v. *Dowd*, 217 Mass. 351; *Purvis* v. *United Brotherhood*, 214 Pa. St. 348; *Booth & Brother* v. *Burgess*, 72 N. J. Eq. 181, 188, 196; *Piano & Organ Workers* v. *P. & O. Supply Co.*, 124 Ill. App. 353.

But with this conflict we have no concern in the present case. The question which it involves was presented and considered in the *Duplex Co.* case, *supra*, as the prevailing and the dissenting opinions show; and there it was plainly held that the point had no bearing upon the enforcement of the Anti-Trust Act, and that since complainant had a clear right to an injunction under that Act as amended by the Clayton Act, it was "unnecessary to consider whether a like result would follow under the common law or local statutes."

Whatever may be said as to the motives of the respondents or their general right to combine for the purpose of redressing alleged grievances of their fellow craftsmen or of protecting themselves or their organizations, the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning of the Anti-Trust Act as interpreted by this court. An act which lawfully might be done by one, may when done by many acting in concert take on the form of a conspiracy and become a public wrong, and may be prohibited if the result be

hurtful to the public or to individuals against whom such concerted action is directed, *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 440; and any suggestion that such concerted action here may be justified as a necessary defensive measure is completely answered by the words of this court in *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, 613, that "Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted."

The record does not disclose whether petitioners at the time of bringing suit had suffered actual injury; but that is not material. An intent to restrain interstate commerce being shown, it is enough to justify equitable interposition by injunction if there be a dangerous probability that such injury will happen; and this clearly appears. The Anti-Trust Act "directs itself against that dangerous probability as well as against the completed result." *Swift and Company* v. *United States*, *supra*, p. 396; *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 82; *Thomson Machine Co.* v. *Brown*, 89 N. J. Eq. 326, 328.

From the foregoing review, it is manifest that the acts and conduct of respondents fall within the terms of the Anti-Trust Act; and petitioners are entitled to relief by injunction under § 16 of the Clayton Act, c. 323, 38 Stat. 730, 737, by which they are authorized to sue for such relief "against threatened loss or damage by a violation of the anti-trust laws," etc. The strikes, ordered and carried out with the sole object of preventing the use and installation of petitioners' product in other states, necessarily threatened to destroy or narrow petitioners' interstate trade by taking from them their customers. That the organizations, in general purpose and in and of themselves, were lawful and that the ultimate result aimed at may not have been illegal in itself, are beside the point. Where the means adopted are unlawful, the innocent general character of the organizations adopting them or the lawfulness of the ultimate end sought to be attained, cannot serve as a justification.

Decree reversed.

SUPREME COURT OF THE UNITED STATES.

No. 412.—October Term, 1926.

Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago and Bloomington Stone Company, et al., Petitioners,
vs.
Journeymen Stone Cutters' Association of North America, Michael W. Mitchell, Individually, etc., et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 11, 1927.]

Mr. Justice Sanford, concurring.

I concur in this result upon the controlling authority of *Duplex Company* v. *Deering*, 254 U. S. 443, 478, which, as applied to the ultimate question in this case, I am unable to distinguish.

SUPREME COURT OF THE UNITED STATES.

No. 412.—October Term, 1926.

Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago and Bloomington Stone Company, et al., Petitioners, vs. Journeymen Stone Cutters' Association of North America, Michael W. Mitchell, individually, etc., et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 11, 1927.]

The separate opinion of Mr. Justice Stone.

As an original proposition, I should have doubted whether the Sherman Act prohibited a labor union from peaceably refusing to work upon material produced by non-union labor or by a rival union, even though interstate commerce were affected. In the light of the policy adopted by Congress in the Clayton Act, with respect to organized labor, and in the light of *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 178-180, I should not have thought that such action as is now complained of was to be regarded as an unreasonable and therefore prohibited restraint of trade. But in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, these views were rejected by a majority of the court and a decree was authorized restraining in precise terms any agreement not to work or refusal to work, such as is involved here. Whatever additional facts there may have been in that case, the decree enjoined the defendants from using "even persuasion with the object or having the effect of causing any person or persons to decline employment, cease employment, or not seek employment, or to refrain from work or cease working under any person, firm, or corporation being a purchaser or prospective purchaser of any printing press or presses from complainant, . . ." (p. 478). These views, which I should not have hesitated to apply here, have now been rejected again largely on the authority of the *Duplex* case. For that reason alone, I concur with the majority.

SUPREME COURT OF THE UNITED STATES.

No. 412.—October Term, 1926.

Bedford Cut Stone Company et al., Petitioners, *vs.* Journeymen Stone Cutters' Association, et al.	On Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 11, 1927.]

Mr. Justice Brandeis, dissenting.

The constitution of the Journeymen Stone Cutters' Association provides: "No member of this Association shall cut, carve or fit any material that has been cut by men working in opposition to this Association." For many years, the plaintiffs had contracts with the Association under which its members were employed at their several quarries and works. In 1921, the plaintiffs refused to renew the contracts because certain rules or conditions proposed by the Journeymen were unacceptable. Then came a strike. It was followed by a lockout, the organization by the plaintiffs of a so-called independent union, and the establishment of it at their plants. Repeated efforts to adjust the controversy proved futile. Finally, the Association urged its members working on buildings in other States to observe the above provision of its constitution. Its position was "that if employers will not employ our members in one place, we will decline to work for them in another, or to finish any work that has been started or partly completed by men these employers are using to combat our organization."

The trial court dismissed the bill. The United States Circuit Court of Appeals affirming the decree said:

"After long negotiations and failure to reach a new working agreement, the union officers ordered that none of its members should further cut stone which had been partly cut by non-union labor, with the result that on certain jobs in different states stone cutters, who were members of the union, declined to do further cut-

ting upon such stone. Where, as in some cases, there were few or no local stone cutters except such as belonged to the union, the completion of the buildings was more or less hindered by the order, the manifest object of which was to induce appellants to make a contract with the union for employment of only union stonecutters in the Indiana limestone district. It does not appear that the quarrying of stone, or sawing it into blocks, or the transportation of it, or setting it in buildings, or any other building operation, was sought to be interfered with, and no actual or threatened violence appears, no picketing, no boycott, and nothing of that character."

If, in the struggle for existence, individual workingmen may, under any circumstances, co-operate in this way for self-protection even though the interstate trade of another is thereby restrained, the lower courts were clearly right in denying the injunction sought by plaintiffs. I have no occasion to consider whether the restraint, which was applied wholly intrastate, became in its operation a direct restraint upon interstate commerce. For it has long been settled that only unreasonable restraints are prohibited by the Sherman Law.[1] *Standard Oil Co.* v. *United States*, 221 U. S. 1, 56-58; *United States* v. *American Tobacco Co.*, 221 U. S. 106, 178-180; *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238; *United States* v. *Trenton Potteries Co.*, No. 27, decided February 21, 1927, p. 3. Compare *United States* v. *Terminal Ass'n*, 224 U. S. 383; *United States* v. *Reading Co.*, 226 U. S. 324, 369. And the restraint imposed was, in my opinion, a reasonable one. The Act does not establish the standard of reasonableness. What is reasonable must be determined by the application of principles of the common law, as administered in federal courts unaffected by state legislation or decisions. Compare *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 466. Tested by these principles, the propriety of the unions' conduct can hardly be doubted by one who believes in the organization of labor.

Neither the individual stonecutters, nor the unions had any contract with any of the plaintiffs or with any of their customers. So far as concerned the plaintiffs and their customers, the individual stonecutters were free either to work or to abstain from working on stone which had been cut at the quarries by members of the employers' union. So far as concerned the Association, the in-

[1]The contrary view was unsuccessfully contended for by Mr. Justice Harlan, dissenting, in Standard Oil Co. v. United States, 221 U. S. 1, 85-100.

dividual stonecutter was not free. He had agreed, when he became a member, that he would not work on stone "cut by men working in opposition to" the Association. It was in duty bound to urge upon its members observance of the obligation assumed. These cut stone companies, who alone are seeking relief, were its declared enemies. They were seeking to destroy it. And the danger was great.

The plaintiffs are not weak employers opposed by a mighty union. They have large financial resources. Together, they ship 70 per cent. of all the cut stone in the country. They are not isolated concerns. They had combined in a local employers' organization. And their organization is affiliated with the national employers' organization, called "International Cut Stone & Quarrymen's Association." Standing alone, each of the 150 Journeymen's locals is weak. The average number of members in a local union is only 33. The locals are widely scattered throughout the country. Strong employers could destroy a local "by importing scabs" from other cities. And many of the builders by whom the stonecutters were employed in different cities, are strong. It is only through combining the 5,000 organized stonecutters in a national union, and developing loyalty to it, that the individual stonecutter anywhere can protect his own job.

The manner in which these individual stonecutters exercised their asserted right to perform their union duty by refusing to finish stone "cut by men working in opposition to" the Association was confessedly legal. They were innocent alike of trespass and of breach of contract. They did not picket. They refrained from violence, intimidation, fraud and threats. They refrained from obstructing otherwise either the plaintiffs or their customers in attempts to secure other help. They did not plan a boycott against any of the plaintiffs or against builders who used the plaintiffs' product. On the contrary, they expressed entire willingness to cut and finish anywhere any stone quarried by any of the plaintiffs, except such stone as had been partially "cut by men working in opposition to" the Association. A large part of the plaintiffs' product consisting of blocks, slabs and sawed work was not affected by the order of the union officials. The individual stonecutter was thus clearly innocent of wrongdoing, unless it was illegal for him

to agree with his fellow craftsmen to refrain from working on the "scab"-cut stone because it was an article of interstate commerce.

The manner in which the Journeymens' unions acted was also clearly legal. The combination complained of is the co-operation of persons wholly of the same craft, united in a national union, solely for self-protection. No outsider—be he quarrier, dealer, builder or laborer—was a party to the combination. No purpose was to be subserved except to promote the trade interests of members of the Journeymens' Association. There was no attempt by the unions to boycott the plaintiffs. There was no attempt to seek the aid of members of any other craft, by a sympathetic strike or otherwise. The contest was not a class struggle. It was a struggle between particular employers and their employees. But the controversy out of which it arose, related, not to specific grievances, but to fundamental matters of union policy of general application throughout the country. The national Association had the duty to determine, so far as its members were concerned, what that policy should be. It deemed the maintenance of that policy a matter of vital interest to each member of the union. The duty rested upon it to enforce its policy by all legitimate means. The Association, its locals and officers were clearly innocent of wrong doing, unless Congress has declared that for union officials to urge members to refrain from working on stone "cut by men working in opposition" to it is necessarily illegal if thereby the interstate trade of another is restrained.

The contention that earlier decisions of this Court compel the conclusion that it is illegal seems to me unfounded. The cases may support the claim that, by such local abstention from work, interstate trade is restrained. But examination of the facts in those cases makes clear that they have no tendency whatsoever to establish that the restraint imposed by the unions in the case at bar is unreasonable. The difference between the simple refraining from work practiced here, and the conduct held unreasonable in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, appears from a recital in that opinion of the defendants' acts:

"The acts embraced the following, with others: warning customers that it would be better for them not to purchase, or having purchased not to install, presses made by complainant, and threatening them with loss should they do so; threatening customers with

sympathetic strikes in other trades; notifying a trucking company usually employed by customers to haul the presses not to do so, and threatening it with trouble if it should; inciting employees of the trucking company and other men employed by customers of complainant, to strike against their respective employers in order to interfere with the hauling and installation of presses, and thus bring pressure to bear upon the customers; notifying repair shops not to do repair work on Duplex presses; coercing union men by threatening them with loss of union cards and with being blacklisted as 'scabs' if they assisted in installing the presses; threatening an exposition company with a strike if it permitted complainant's presses to be exhibited; and resorting to a variety of other modes of preventing the sale of presses of complainant's manufacture in or about New York City, and delivery of them in interstate commerce, such as injuring and threatening to injure complainant's customers and prospective customers, and persons concerned in hauling, handling, or installing the presses." (pp. 463-4.)

The character of the acts held in *Duplex Printing Press Co.* v. *Deering* to constitute unreasonable restraint is further shown by the scope of the injunction there prescribed (pp. 478-479):

"There should be an injunction against defendants and the associations represented by them, and all members of those associations, restraining them, according to the prayer of the bill, from interfering or attempting to interfere with the sale, transportation, or delivery in interstate commerce of any printing press or presses manufactured by complainant, or the transportation, carting, installation, use, operation, exhibition, display, or repairing of any such press or presses, or the performance of any contract or contracts made by complainant respecting the sale, transportation, delivery, or installation of any such press or presses, by causing or threatening to cause loss, damage, trouble, or inconvenience to any person, firm or corporation concerned in the purchase, transportation, carting, installation, use, operation, exhibition, display or repairing of any such press or presses, or the performance of any such contract or contracts; and also and especially from using any force, threats, command, direction, or even persuasion with the object or having the effect of causing any person or persons to decline employment, cease employment, or not seek employment, or to refrain from work or cease working under any person, firm, or corporation being a purchaser or prospective purchaser of any printing press or presses from complainant, or engaged in hauling, carting, delivering, installing, handling, using, operating or repairing any such press or presses for any customer of complainant. Other threatened conduct by defendants or the association they represent, or the members of such associations, in furtherance of the second-

ary boycott should be included in the injunction according to the proofs."

The difference between the facts here involved and those in the *Duplex* case does not lie only in the character of the acts complained of. It lies also in the occasion and purpose of the action taken and in the scope of the combination. The combination there condemned was not, as here, the co-operation for self-protection only of men in a single craft. It was an effort to win by invoking the aid of others, both organized and unorganized, not concerned in the trade dispute. The conduct there condemned was not, as here, a mere refusal to finish particular work begun "by men working in opposition to" the union. It was the institution of a general boycott, not only of the business of the employer, but of the businesses of all who should participate in the marketing, installation or exhibition of its product. The conduct there condemned was not, as here, action taken for self-protection against an opposing union installed by employers to destroy the regular union with which they long had had contracts. The action in the *Duplex* case was taken in an effort to unionize an open shop. Moreover, there the combination of defendants was aggressive action directed against an isolated employer. Here it is defensive action of working-men directed against a combination of employers. The serious question on which the Court divided in the *Duplex* case was not whether the restraint imposed was reasonable. It was whether the Clayton Act had forbidden federal courts to issue an injunction in that class of cases. See p. 464.

In *Loewe* v. *Lawlor*, 208 U. S. 274; *Gompers* v. *Buck Stove Co.*, 221 U. S. 418; and *Lawlor* v. *Loewe*, 235 U. S. 522, the conduct held unreasonable was not, as here, a refusal to finish a product partly made by members of an opposing union. It was invoking the power of the consumer as a weapon of offensive warfare. There, a general boycott was declared of the manufacturer's product. And the boycott was extended to the businesses of both wholesalers and retailers who might aid in the marketing of the manufacturer's product. Moreover, the boycott was to be effected, not by the co-operation merely of the few members of the craft directly and vitally interested in the trade-dispute, but by the aid of the vast forces of organized labor affiliated with them through the American Federation of Labor.

In *United States* v. *Brims*, 272 U. S. — the combination complained of was not the co-operation merely of working-men of the same craft. It was a combination of manufacturers of millwork in Chicago, with building contractors who cause such work to be installed, and the unions whose members are to be employed. Moreover the purpose of the combination was not primarily to further the interests of the union carpenters. The immediate purpose was to suppress competition with the Chicago manufacturers. As this Court said:

"The respondent manufacturers found their business seriously impeded by the competition of material made by nonunion mills located outside of Illinois. . . . They wished to eliminate the competition of Wisconsin and other nonunion mills which were paying lower wages and consequently could undersell them. . . . The local manufacturers, relieved from the competition that came through interstate commerce, increased their output and profits; they gave special discounts to local contractors; more union carpenters secured employment in Chicago and their wages were increased. These were the incentives which brought about the combination."

In *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344; 268 U. S. 295; *United Leather Workers* v. *Herkert*, 265 U. S. 457; *Industrial Association* v. *United States*, 268 U. S. 64, as in *Hopkins* v. *United States*, 171 U. S. 578; *Anderson* v. *United States*, 171 U. S. 604; *Montague* v. *Lowry*, 193 U. S. 38, and *Swift & Co.* v. *United States*, 196 U. S. 375, the questions put in issue were not the reasonableness of the restraint, but whether the restraint was of interstate commerce.

Members of the Journeymen Stone Cutters' Association could not work anywhere on stone which has been cut at the quarries by "men working in opposition" to it, without aiding and abetting the enemy. Observance by each member of the provision of their constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and to his fellows. If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman Law and the Clayton Act an instrument for imposing restraints upon labor which reminds of involuntary servitude. The Sherman Law was held in *United States* v. *United States Steel Corporation*, 251 U. S. 417, to permit capitalists to combine in a single corpora-

tion 50 per cent. of the steel industry of the United States dominating the trade through its vast resources. The Sherman Law was held in *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, to permit capitalists to combine in another corporation practically the whole shoe machinery industry of the country, necessarily giving it a position of dominance over shoe-manufacturing in America. It would, indeed, be strange if Congress had by the same Act willed to deny to members of a small craft of working-men the right to co-operate in simply refraining from work, when that course was the only means of self-protection against a combination of militant and powerful employers. I cannot believe that Congress did so.

Mr. Justice HOLMES concurs in this opinion.